

SURFACE TRANSPORTATION REAUTHORIZATION: PROGRESS, CHALLENGES, AND NEXT STEPS

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

MAY 7, 2014

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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SURFACE TRANSPORTATION REAUTHORIZATION: PROGRESS, CHALLENGES, AND NEXT STEPS

WEDNESDAY, MAY 7, 2014

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:31 p.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. All right. This hearing is going to come to order, which, in view of the way that we've been up until now, is actually asking quite a lot.

Mr. Secretary, we're incredibly happy to have you here. And I'm going to have a few words to say but, before that, I want to sort of buck up your spirits to know that there are some people up here who are fighting for what you want and what we need.

So I'll make my opening statements and I think Senator Thune will be a few minutes late, but when he comes in he gets to give his. Well, this is going to be a very, very important conversation.

Until recently, this Nation was the global leader when it came to building the greatest bridges, the greatest interstates, the greatest tunnels and canals and ports and railways. From coast to coast, we're reminded of those golden days of innovation and energy and vigor and innovation and investment that ultimately set our nation apart from the rest of the world.

But those days of big ideas, bold ideas, bold investments and preparing for the future seem to be behind us. This nation, which once dared to dream, dared to lead, has retreated from the legacy of our predecessors. And it's a shameful and sad thing to observe. And it need not happen.

We've gotten into a rut. We're unable to pass long-term funding transportation bills rooted in bold ideas. Instead, we're now focused on the nickels and dimes of our deficit and mainly because of the high political costs associated with proposing any kind of revenue increases. In other words, you know, win the election; that's what counts. Help the country; well, yes, if you've got time that'd be good. But don't take any chances on the election. That thinking is deep and thick in this Senate and in this Congress. And it's wrong

and it's bad. It's humiliating for the individuals involved and for the country as a whole, obviously.

Sadly, this short-sightedness has left us with a broken and increasingly second-rate transportation system. I didn't realize we were tenth in the world, overall. I just assumed we were second or third or first, but we're not. This has left commuters sitting in traffic for hours, daily, wasting precious time. It has left us with shaky bridges that have compromised the safety of our traveling public.

Unfortunately, this is not the first time that I've described this dismal state of our nation's infrastructure. I gave a terrific speech yesterday in the Finance Committee, Mr. Secretary, but you missed it. Nor is it the first time I've expressed my dismay that we've grown accustomed to an ad hoc, short-term approach to funding our nation's infrastructure. By which I mean future from one inadequate funding bill to the next without much care for the long-term implications of this negligent way of governing.

Collectively, the Congress has shown neither the will nor, the saddest part, the courage to put aside differences and work to find a long-term solution. This hurts everyone; it impairs commerce; it has soured our ability to do big things; it has a bad effect on young people. You know, we talk all the time about science, technology, engineering and math, and then we don't fund anything which those things can feed into and our ability to be a country that is innovating and investing and building projects that would define our future. That's what we were. That's what I grew up in in the 1960s and the 1970s, but no longer. Not now.

Nations around the world have come to realize, just as we once did, that in order to grow their economies and increase competitiveness, they have to invest. And, yes, we did sort of redo the Panama Canal. Are our ports ready for the bigger boats that are going to come through the Panama Canal? No. But, we glory in the fact that we did what Teddy Roosevelt did and doubled its width and all the rest of it and that's sort of like the end of the problem. No. That's the beginning of the opportunity, except, we've done nothing with it.

So whether it's the Panama Canal or building high-speed rail lines or adding capacity at ports, we all know the statistics of the state of our infrastructure are about as bad as it gets. And we know that and do nothing about it. We are unwilling to pay for what we so desperately need.

Going forward, our economy, our global competitiveness and the safety of the traveling public will continue to suffer unless we change course almost immediately or as fast as can possibly be done by a relatively inept Senate.

I'm a firm believer that the Federal Government has a huge and critical role to play in the upgrading of our nation's infrastructure. Who in heaven's name could dispute that? How do you think the interstates got built? How do you think the Appalachian Highways got built? How do you think bridges get built? I mean, it's ridiculous. And when I say infrastructure, of course, what comes to everybody's mind is roads. And they don't think about ports. They don't think about other aspects of all of this; trains and, all of that. They just think of roads. Well, if we could do our roads, that'll be enough.

We need to lead. We need to create a coherent and unified mission for our Federal surface transportation programs. And in some places we need to grow those programs. This is not a partisan issue. Oh, it's so easy to make things partisan. And sometimes it's so stupid too, because it just isn't true. This is a fundamental economic issue. It's about our future.

The Department of Transportation recently estimated that the Highway Trust Fund will run out of money in August and need an additional addition of general fund monies to get us through the busy construction season. Well, this is just another reminder of what we have already known, and that is what we have been discussing for years: We need more money for our infrastructure system. It's the only way we're going to begin to solve our problems.

Now, they came up with this, what was this, new kind of money, which came in and went out of style in about two weeks. Bit something? What was it, Maria?

Bitcoins, yes. I mean, I don't know, maybe the Department of Transportation can get into that business and pay for it. But, otherwise, there's no substitute for something called money.

My colleague and friend, Senator Boxer, has already signaled that she is dead serious about passing a long-term transportation bill and I intend to support her every single step of the way. I consider nothing off the table.

It is my hope that all of our colleagues will put aside their politics and their shortsightedness and join us in this effort. And I don't mean to disparage everybody. I mean, there are people in this room who'd do anything for more transportation but there are too many who wouldn't.

Beyond dealing with repairs of our existing infrastructure, we are experiencing a fundamental shift in the transportation trends across the country. Vehicles are becoming more fuel efficient, young adults continue to drive less and public transportation ridership is at an all-time high. What this means is that we also need to rethink our approach to transportation investment. And it's not just all called roads by definition of what I just said.

Congress, the Administration, the transportation community and the American people need to put aside the politics. And I don't mean Republican/Democrat so much as just that we can't spend. We can only cut; we can't spend. Even if it's really, really important; we can't spend anything. And part of that is timidity. We've got to put timidity aside. We've got to be able to break from the pack; do things which might take a couple of points off of our current standing in the polls.

I, fortunately, am not running again. So I have no standing whatsoever in the polls but I still make this speech.

None of the proposals, alone, will be the silver bullet for our infrastructure needs but we can conclude that the status quo is insufficient. The nation's transportation system should be something that unites us, leads to growth in our economy and creates jobs.

I'm glad to have Secretary Foxx here today to discuss the Administration's proposal, which I applaud, that makes some bold changes in how to look at and fund something called "transportation at large." I was pleased the Administration proposed significant new funding to keep the country moving forward and to also

allocate resources to where our transportation system sorely needs those resources; such as moving freight and improving rail service.

I look forward to our discussion today almost as much as I do to the remarks of the Ranking Member and my esteemed colleague.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman, and thank you for holding this hearing today.

I want to thank and welcome Secretary Foxx back to the Committee. We appreciate the opportunity to discuss with you the Administration's surface transportation proposal as well as other matters.

There probably isn't anything that's more important in terms of our competitiveness as a nation than maintaining and improving our nation's infrastructure. And states like South Dakota, where I come from, rely on a top-quality transportation network to connect the vast distances between our communities and to help deliver critical agricultural products and natural resources via truck and freight rail to markets across the country and around the globe.

Also important is the safety mission of the National Highway Traffic Safety Administration, which not only conducts vehicle safety research but also administers various grants to keep motorists safe. While we are approaching the expiration of the most recent surface transportation bill, or MAP-21, that was signed into law just less than 2 years ago, like the Chairman, I am looking forward to working with many of our colleagues on both the Commerce Committee and also the Finance Committee to ensure that we continue to have a robust surface transportation program.

I'm glad the Administration has released its first ever surface transportation reauthorization proposal last week, especially in light of the anticipated shortfalls that are facing the Highway Trust Fund.

As many in this room know, the Highway Trust Fund is projected to become insolvent later this summer. This shortfall, which is already being felt, will lead to delays in highway and safety improvements and reimbursements to states and to the construction sector.

This is particularly problematic for cold weather states, such as South Dakota, that have a shorter construction season and a limited window to make decisions regarding which projects to select, bid, and ultimately begin construction.

As Congress works to reauthorize our Nation's highway programs, the most important question we must answer is how we will pay for the program going forward.

Since serving on the House Transportation and Infrastructure Committee during TEA-21, to our efforts with SAFETEA-LU, and most recently with MAP-21, I'm skeptical about the financing proposals the Administration has put forward to fund its \$302 billion plan, especially the Administration's reliance upon one-time revenues from so-called corporate tax reform. This aspect of the plan is unlikely to secure broad support in Congress and fails to provide a longer-term funding solution for these vital programs.

I'm also concerned by the Administration's proposal to fund additional programs, including new programs on passenger rail and vehicle safety and an expansion of TIGER, through the successor to the Highway Trust Fund. In a time of limited revenue, it would seem to me unwise to make new promises regarding programs that have the potential to divert funding from the core mission of the Highway Trust Fund.

Nevertheless, there are some provisions I'm encouraged by, including the fact that the Administration has recognized my call for extending the deadline for Positive Train Control implementation. As we've discussed previously in this committee, delays at the Federal Communications Commission and other unforeseen events since enactment of the PTC mandate in 2008, have prevented nearly all passenger and freight railroads from moving forward on implementation of this technology.

Along with Senators Blunt, McCaskill and Pryor, I've introduced legislation, which is supported by other members of this committee, to extend the 2015 deadline in order to provide all railroads with a realistic time-frame for full implementation.

There are now 14 bipartisan co-sponsors of this legislation, and I hope that our committee will address the PTC issue, yet, this Congress.

Unfortunately, however, the Administration's proposal does not include a straightforward extension of the 2015 deadline, something that I think is necessary especially given the delays at the FCC. I hope to see such an extension included in any final bill reported out of the Committee and I look forward to working with my colleagues and with the Administration on this important issue.

Mr. Chairman, I want to thank you again for holding the hearing and thank Secretary Foxx for being with us and for his testimony and look forward to discussing with him further what we can do to get a robust highway program up and running that secures not only the near-term needs that we have but also those that we have down the road well into the future.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Secretary Foxx, I would ordinarily call on you immediately, but we have the Chairman of the Environment and Public Works Committee who is sort of a big enchilada in this whole thing.

And she wants to say something I hope.

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you.

Senator, I'll just take 2 minutes. First, to thank all the members of this committee who are really involved in helping us resolve the problems we face and, of course, the secretary.

We're going bust in the trust fund in August and everybody seems to realize this. And if that were to happen, our states have already told us, every one of our states, that they will stop funding any new projects. And so, it would bring about a terrible economic situation for our businesses and our workers.

So what I want to tell you today is some good news. The "Big Four" of the EPW Committee, which consists of myself, Senator

Carper, Senator Vitter and Senator Barrasso, Senator Fischer's a member, and there are some others that aren't who are members, we've agreed on a proposal for a multi-year bill. It's fiscally conservative in the sense that its current spending plus inflation, we don't go ahead of ourselves there because we have such a shortfall. It's \$18 billion a year.

So we're going to have a press conference or a press statement tomorrow. We will be putting our bill out at that time. So I wanted to announce that because this committee, under you leadership and Senator Thune, has a huge obligation to write part of this bill; which doesn't cross on our jurisdiction but you know the titles that you deal with. And also, of course, the Banking Committee has jurisdiction and also the Finance Committee has huge jurisdiction to figure out a pay-for to find that shortfall.

So I just came here to thank you so much for doing this hearing today because every one of us, in each committee, has a lot of work ahead of us. And I will be there with you and Senator Thune, on this committee and all the colleagues, trying to reach a good agreement but quickly, because we don't have a lot of time.

And the Administration's proposal, we're going over it to see what we can get done in bipartisan way. And that's my report. And I thank you.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Thank you, Mr. Chairman for holding this hearing today. I would like to welcome Secretary Foxx back to the Committee. We appreciate the opportunity to discuss with you the administration's surface transportation proposal as well as other matters.

Maintaining and improving our Nation's infrastructure is absolutely vital to our country's economic prosperity. States like South Dakota rely on a top quality transportation network to connect the vast distances between our communities and to help deliver critical agriculture products and natural resources via truck and freight rail to markets across the country and around the globe.

Also important is the safety mission of the National Highway Traffic Administration, which not only conducts vehicle safety research, but also administers various grants to keep motorists safe. While we are approaching the expiration of the most recent Surface Transportation bill (MAP-21) that was signed into law just less than two years ago, like the Chairman, I am looking forward to working with my colleagues on both the Commerce Committee and also the Finance Committee to ensure that we continue to have a robust surface transportation program.

I am glad that the administration released its first-ever surface transportation reauthorization proposal last week, especially in light of the anticipated shortfalls facing the Highway Trust Fund.

As many in this room know, the Highway Trust Fund is projected to become insolvent later this summer. This shortfall, which is already being felt, will lead to delays in highway and safety improvements and reimbursements to states and the construction sector.

This is particularly problematic for cold-weather states such as South Dakota that have a shorter construction season and a limited window to make decisions regarding which projects to select, bid, and ultimately begin construction.

As Congress works to reauthorize our Nation's highway programs, the most important question we must answer is how we will pay for the program going forward.

Since serving on the House Transportation and Infrastructure Committee during TEA-21, to our efforts with SAFETEA-LU, and most recently MAP-21, I am skeptical about the financing proposals the administration has put forward to fund its \$302 billion plan, especially the administration's reliance upon one-time revenues from so-called corporate tax reform. This aspect of the plan is unlikely to secure broad support in Congress and fails to provide a longer term funding solution for these vital programs.

I am also concerned by the administration's proposal to fund additional programs—including new programs on passenger rail and vehicle safety and an expansion of TIGER—through the successor to the Highway Trust Fund. In a time of limited revenue, it would be unwise to make new promises regarding programs that have the potential to divert funding from the core mission of the Highway Trust Fund.

Nevertheless, there are some provisions I am encouraged by, including the fact that the administration has finally recognized my call for extending the deadline for Positive Train Control (PTC) implementation. As we have discussed previously in this Committee, delays at the Federal Communications Commission (FCC), and other unforeseen events since enactment of the PTC mandate in 2008, have prevented nearly all passenger and freight railroads from moving forward on implementation of this technology.

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Unfortunately, however, the administration's proposal does not include a straightforward extension of the 2015 deadline, something which I think is necessary, especially given the delays at the FCC. I hope to see such an extension included in any final bill reported out of our committee, and I look forward to working with my colleagues and with the administration on this important issue.

Thank you again Mr. Chairman for holding this hearing, and I look forward to Secretary Foxx's testimony.

The CHAIRMAN. Thank you, Chairman Boxer. And your work is distinguished and aggressive and smart. You know the margins and how to work them.

Mr. Secretary, no more speeches between us and you. Have at it.

**STATEMENT OF HON. ANTHONY R. FOXX, SECRETARY,
U.S. DEPARTMENT OF TRANSPORTATION**

Secretary Foxx. Thank you, Mr. Chairman.

Chairman Rockefeller, Ranking Member Thune, and all members of the Committee, I want to thank you all for having me and to say a special word of thank you to Senator Boxer, to the Chair of the EPW Committee, for the work that you're doing with folks on a bipartisan basis to help solve this problem.

At the U.S. Department of Transportation safety is, by far, our most important mission. We take this mission seriously and we appreciate the attention this committee has and will continue to devote to this important subject. It's an important one for all parts of our country and especially now.

A week ago, in fact, one week ago this very hour, a train carrying crude oil from Chicago to Virginia derailed not far from downtown Lynchburg. The crash sent oil spilling into the James River and flames, stories high, ignited on the banks of that river causing the evacuation of a 20-block area. We're fortunate no one was killed let alone hurt. Back in July, as you remember, an oil train crashed outside of Quebec killing 47. Something like that, unfortunately, could easily happen inside our borders too.

We are at the dawn of an incredibly promising time for energy in America. Increased production is creating new jobs and more opportunity. But moving this oil is also creating more risk and greater danger. If America is going to be a world leader in producing this energy than we're going to have to be a world leader in safely transporting it as well. So today I've taken further action to ensure that we are.

Today, I've released a safety alert advising shippers and energy companies to no longer use the DOT-111 tank car and to use a higher standard of car when transporting oil. This is consistent with my statements 4 weeks ago before the transportation appropriations subcommittee that, for purposes of transporting Bakken crude, the DOT-111 should be retrofitted or replaced. I've also signed an emergency order. It requires, by law, shippers and energy companies to identify the routes Bakken oil crude is traveling and to notify State Emergency Responders so they can work with communities that are along those routes. That way local police and fire departments can prepare. These are just the latest steps we've taken.

Last week, we submitted a comprehensive rule to OMB that will address a variety of issues; new tank car standards, speed, proper classification, among others. The relevance to this hearing today is simply this: Even these safety measures will be insufficient if we do not prepare our rails, roads and communities by adding another important element, a first-rate infrastructure system.

Over the next generation, we're going to not just be moving more energy. We're going to be moving more of everything; more people and more goods. By 2050, we'll have to move almost twice the amount of freight that we currently do. And whether we can do that safely is more of an open question now than it has ever been. Mostly because we have struggled to maintain transportation funding levels in recent years. In fact, today I've sent a letter to all State Departments of Transportation. It warns them that if action isn't taken, the Highway Trust Fund could become insolvent as soon as August. And if that happens, it will be near impossible for communities to keep their infrastructure safe and up to code.

This is why we sent the GROW AMERICA Act to the Hill last week. Because, if we didn't, if we don't invest in our transportation system right now, it's easy to see a future that is full of even more crumbling roads, bridges, broken track and chokepoints. You can actually see this right now.

Last month, I was in Nashville where there are four bridges that have reached the end of their useful life. And one has been shut down three times since last summer because concrete crumbles and falls onto the roadway below where drivers drive.

GROW AMERICA could fix a bridge like this and keep travelers safe. It would do so not only by making the Highway Trust Fund solvent but by growing our transportation programs to accommodate our growing needs. The other side of this wouldn't just be a newer, safer, transportation system; it would be a transportation system that supports many thousands, if not millions, of new jobs. Both jobs in building our infrastructure and jobs in industries that are supported by it; industries like tourism and shipping. Especially shipping, because this includes the resources we need to strengthen America's freight network. It would also modernize how we fund transportation. For example, GROW AMERICA streamlines the approval and permitting process so projects could be built faster and cheaper but with the same quality.

We believe there's room for agreement here, not just on the bipartisan reforms but also on funding, too. And we're particularly encouraged that members of both parties, like Chairman Dave

Camp and Senator Boxer, have expressed their openness to pro-growth business tax reform as a pay-for.

So I'll end my remarks there except to say that for more than half a century Congress has consistently recognized that as America grows so must our investment in transportation. And, in almost every case, each new surface reauthorization law has increased investment by 40 percent compared to the last law. And Congress has passed them with broad bipartisan majorities in both Houses. I see no reason why Congress can't do so again. America does not need another crisis. After all, we all take the same oath, an oath to protect this country and its people. And that's what investing in our transportation system does. It creates a sturdier, stronger, safer America.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Foxx follows:]

PREPARED STATEMENT OF HON. ANTHONY R. FOXX, SECRETARY,
U.S. DEPARTMENT OF TRANSPORTATION

Chairman Rockefeller, Ranking Member Thune, and Members of the Committee, thank you for the opportunity to appear before you today to talk about the Administration's proposal to reauthorize the surface transportation programs, called the GROW AMERICA Act.

Transportation is a critical engine of the Nation's economy. Investments in the national transportation network over the country's history, and especially the last half of the 20th Century, have been instrumental in developing the world's largest economy and most mobile society. However, before the end of this summer the Highway Trust Fund—which funds a significant portion of the construction and repair of our surface transportation system—is projected to become insolvent and just a few weeks later the authorities that underpin our surface transportation programs will expire. Without action, many States, tribal and local communities may be forced to slow or stop work on critical transportation projects that our Nation depends upon to move people, energy, and freight every day, putting jobs at risk and slowing investment in our future. This slow-down may happen well in advance of actual insolvency. Indeed, we have reports that many states are already re-thinking their investment plans due to the uncertainty coming from Congress.

Additionally, it is critical that we boost infrastructure investment as we are not keeping pace with our growing economy, our growing population, and the traveling needs of the public. For example:

- 65 percent of America's major roads are not in good condition. One in four bridges need significant repair or cannot handle today's traffic. 45 percent of Americans do not have access to transit.
- By 2020, the Highway Trust Fund's purchasing power will have dropped by nearly half since 1990, even though the country's population is projected to increase 30 percent.
- Bringing existing transit assets up to a state of good repair will require an annualized investment level of \$18.5 billion through the year 2030, compared to the \$10.3 billion currently being spent per year.

The Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act, or GROW AMERICA Act, is a \$302 billion, four-year transportation reauthorization proposal that provides increased and stable funding for our Nation's highways, bridges, transit, and rail systems. The Administration's proposal is funded by supplementing current revenues with \$150 billion in one-time transition revenue from pro-growth business tax reform. This will prevent a Trust Fund shortfall for four years and increase investments to meet national economic goals.

The GROW AMERICA Act will provide States, tribal and local governments with the certainty needed to effectively plan and start construction on projects that will support millions of jobs over the next several years. It will also enable more transformative transportation projects that will improve the Nation's global competitiveness and mobility in communities across the country. Specifically, the GROW AMERICA Act will provide—

- *\$199 billion to invest in our Nation’s highway system.* The proposal will increase the amount of highway funds by an average of about 22 percent above FY 2014 enacted levels, emphasizing “Fix-it-First” policies and reforms that prioritize investments for much needed repairs and improvements to the safety of our roads and transit services, with particular attention to investments in rural and tribal areas.
- *\$7 billion focused on car and truck safety measures.* The proposal will also provide \$7 billion for the National Highway Traffic Safety Administration and Federal Motor Carrier Safety Administration to improve safety for all users of our highways and roads.
- *\$72 billion to invest in transit systems and expand transportation options.* The proposal increases average transit spending by nearly 70 percent above FY 2014 enacted levels, which will enable the expansion of new projects that improve connectivity, such as light rail, street cars, and bus rapid transit, in suburbs, fast-growing cities, small towns, and rural communities, while still maintaining existing transit systems. The GROW AMERICA Act proposes a powerful, \$5.1 billion increase from FY14 enacted in investments to address public transit’s maintenance backlog to reduce bus and rail system breakdowns; create more reliable service; and reduce delays that make it harder for all commuters to get to work. The proposal also includes the innovative Rapid Growth Area Transit Program, which will provide \$2 billion over four years to fast growing communities for bus rapid transit and other multimodal solutions to get ahead of the challenges caused by rapid growth.
- *Improve project delivery and the Federal permitting process.* The GROW AMERICA Act will build on recent efforts to expedite project approval timelines while delivering better outcomes for communities and the environment. The proposal expands on a series of successful efforts by the Administration to expedite high priority projects and identify best practices to guide future efforts without undermining bedrock environmental laws or public engagement. Not only will important projects break ground faster, but the increased level of transparency and accountability will lead to delivering better environmental outcomes, as the proposal will improve interagency coordination by advancing concurrent, rather than sequential, project reviews and will improve transparency of project reviews and timelines through online “dashboards.” It will also increase flexibility for recipients to use Federal transportation funds to support environmental reviews, and help to integrate overlapping requirements.
- *Tools and resources to encourage regional coordination and local decision making.* The proposal includes policy reforms to incentivize improved regional coordination by Metropolitan Planning Organizations (MPOs), which are local communities’ main voice in transportation planning. The GROW AMERICA Act also strengthens local decision making in allocating Federal funding so that local communities can better realize their vision for improved mobility. High-performing large MPOs will be granted control of a larger portion of funds under two Federal transportation programs—the Surface Transportation Program (STP) and the Transportation Alternatives Program (TAP)—and these MPOs will also receive funds through a set aside under the new Fixing and Accelerating Surface Transportation (FAST) program.

The GROW AMERICA Act will take critical steps to safeguard the traveling public. The Act addresses safety vulnerabilities on our transportation network—vulnerabilities that pose a potential threat to the health and welfare of all American workers and families. Specifically, the Act will—

- Expand authority to protect the public from automobile defects. The Act will strengthen safety regulators’ ability to hold automobile manufacturers accountable for defects that can cost lives.
- Take steps to improve truck and bus safety by streamlining the Federal truck- and bus-safety grant programs to provide more flexibility for states to take fast action to address regional and evolving truck- and bus-safety issues.

The U.S. transportation system moves more than 52 million tons of freight worth nearly \$46 billion each day, or almost 40 tons of freight per person per year, and freight tonnage is expected to increase 62 percent by 2040. The GROW AMERICA Act will make critical investments to help improve the safe and efficient movement of freight across all modes of transportation—highway, rail, port, and pipeline. Without new investment, supply chains degrade, hindering job growth and harming retailers, manufacturers, and the millions of American consumers who need their

goods to be transported efficiently and affordably. Specifically, the GROW AMERICA Act will—

- *Provide \$10 billion for a multi-modal freight program that strengthens America's exports and trade.* The GROW AMERICA Act will help make critical investments to improve the efficiency of the movement of goods throughout our transportation system and help accommodate future growth, in part through providing \$10 billion over four years to establish a new multimodal freight grant program to fund innovative rail, highway, and port projects.
- *Align planning among the Federal Government, states, ports, and local communities to improve decision-making.* The GROW AMERICA Act incentivizes states to collaborate and establish long term freight strategic plans that will help inform a National Freight Strategic Plan assembled by the U.S. Department of Transportation that will serve as the basis for how the Department can best support freight movement. Additionally, the GROW AMERICA Act will give shippers and transportation providers a real seat at the table for making investment decisions.

The GROW AMERICA Act will expand economic growth, and create jobs and new opportunities for Americans. The President is dedicated to enhancing opportunity for all Americans and U.S. businesses by investing in transportation projects that better connect communities to centers of employment, education, and other critical services. Specifically, the GROW AMERICA Act will—

- *Support ladders of opportunity to the middle class.* Today, 45 percent of Americans lack access to public transportation, limiting the options of many Americans to jobs, education and other necessities. The GROW AMERICA Act will provide improved access to safer and less expensive transportation options for millions of Americans in part by investing \$72 billion in public transportation and expanding transportation options for millions of Americans. This proposal includes \$2 billion for an innovative Rapid Growth Area Transit Program to provide new bus rapid transit and other multimodal solutions for rapidly growing regions. The GROW AMERICA Act includes \$245 million for workforce development to enhance the size, diversity, and skills of our Nation's construction and transportation workforce through collaborative partnerships with the U.S. Department of Labor, States, and non-governmental organizations.
- *Provide a significant investment to enhance safety and modernize our rail infrastructure to meet growing market demand.* The Act will invest \$19 billion over four years, including nearly \$5 billion annually for high performance and passenger rail programs with a focus on improving the connections between key regional city pairs and high traffic corridors throughout the country. The Act will also improve rail safety and provide certainty to states and local communities by dedicating sustained funding to make the transportation investments necessary to improve our infrastructure and support our economic growth. The Act also builds on current investments to vastly improve the system in areas ranging from Positive Train Control (PTC) implementation to enhancing flexibility in financing programs that will better enable the rehabilitation of aging infrastructure.

The GROW AMERICA Act will provide more bang-for-the-buck through innovative project finance and delivery improvements. In a time of tight fiscal and budgetary constraints, the President's proposal includes a number of measures to ensure that the American public is getting the most out of Federal transportation infrastructure investments that lead to better outcomes for all Americans. Specifically, the GROW AMERICA Act will—

- *Utilize competitive funding to spur innovation.* The proposal will provide \$5 billion over four years—an increase of more than 100 percent—for the highly successfully TIGER competitive grant program and \$4 billion embedded in the highway and transit requests for a competitive grant program called Fixing and Accelerating Surface Transportation (FAST). Modeled after the Department of Education's Race to the Top program, FAST will reward States, Tribes, and MPOs that adopt bold, innovative strategies and best practices in transportation that will have long-term impact on all projects across the transportation programs.
- *Incentivize cost-effective investments.* The proposal will strengthen the performance incentives to maintain safety and conditions of good repair, and expand research and technology activities in order to improve the productivity of our transportation systems, thereby increasing taxpayer return on investment.

- *Provide \$4 billion to attract private investment in transportation infrastructure.* The Transportation Infrastructure Finance and Innovation Act (TIFIA) program leverages Federal dollars by facilitating private participation in transportation projects and encouraging innovative financing mechanisms that help advance projects more quickly. The GROW AMERICA Act calls for \$4 billion in funding over four years, which could support up to \$40 billion in loans for transportation projects. The GROW AMERICA Act will strengthen the Railroad Rehabilitation and Improvement Financing (RRIF) Program by allowing the Department to reduce the cost of obtaining a loan in some cases, making RRIF more accessible to short line and regional railroads. The proposal will raise the cap of Private Activity Bonds (PABs) to \$19 billion, making room for more projects considering a public-private partnership approach to be able to take advantage of this cost-saving tool.

The Administration proposes to fund the GROW AMERICA Act through a pro-growth, business tax reform, without adding to the deficit. The President's Budget outlined a proposal to dedicate \$150 billion in one-time transition revenue from pro-growth business tax reform to address the funding crisis facing surface transportation programs and increase infrastructure investment. This amount is sufficient to not only fill the current funding gap in the Highway Trust Fund, but increase surface transportation investment over current authorized levels by nearly \$90 billion over the next four years. When taking into account existing funding for surface transportation, this plan will result in a total of \$302 billion being invested over four years putting people back to work modernizing our transportation infrastructure. We believe that a comprehensive approach to reforming our business taxes can help create jobs and spur investment, while ensuring a fairer and more equitable tax system that eliminates current loopholes that reward companies for moving profits overseas and allow them to avoid paying their fair share. While we are putting forward this pro-growth financing plan to encourage bipartisan efforts to support a visionary infrastructure plan, we are open to all ideas for how to achieve this important objective, and will look forward to working closely with this Committee and all Members of Congress of both parties on a solution that will invest in more job creating transportation projects.

Thank you and I look forward to your questions.

The CHAIRMAN. Thank you, sir.

I'm going to ask the first question and, everybody, we'll stay it at 5 minutes. And everybody is going to get a chance to ask what they want.

We have closed down the government. We talked about fiscal cliffs. August 29, funding from the Highway Trust Fund stops. What will be the effect in our states in terms of projects? Number one. And, number two, in the instinct to plan for other continued needed projects?

Secretary FOXX. Mr. Chairman, the short answer is that we will start to feel the effects of the Highway Trust Funds insolvency before August. June and July is primetime for State DOTs to start letting contracts. And facing the kind of uncertainty that is ahead of us, many of those contracts will not be signed which will mean work will not go forward. In some cases, projects will be slowed down and estimates are that we stand to lose about 700,000 jobs immediately as a result of this trust fund moving into insolvency.

On the question of planning, I would say that is also something that has been a challenge for many State DOTs and local project sponsors. Congress, over the last five years, has passed 18 continuing resolutions and nine extensions. And the cumulative effect of these short-term measures has been that, at the state and local levels, the project pipeline is slowing. Folks aren't spending the tens of millions of dollars it takes to even plan a project because they don't know whether the project can actually get done.

And so, this will be more of the same if we continue to drift toward insolvency this summer, sir.

The CHAIRMAN. To follow up on that, we have been building something called Appalachian Corridors in Appalachia since 1965. And, we've got one Corridor, called Corridor H, which is not in the newspapers a great deal because not a lot is happening to it. But, if it connects up with I-66, as it can in about 50 miles, if 50 miles are completed, it will take two-thirds of the land mass of West Virginia, which is not very large, and change all of their economic prospects for the better.

So, if we're going to run out of money, the psychology of planning ahead disappears. Just like, if people don't think that there is a place for them in some kind of industry, they don't gear up for it. The psychology of planning and working is mixed in with the psychology of spending or not spending; right?

Secretary FOXX. That's correct, sir.

The CHAIRMAN. Those are my two questions for the moment. Distinguished Senator Thune.

Senator THUNE. Thank you, Mr. Chairman.

Mr. Secretary, the Administration's proposal would increase funding for transit by 70 percent, for rail programs by 243 percent, but it would only increase highway funding by 21 percent compared to current levels. I'm wondering what the reason is for that discrepancy? We've always thought about the highway bill, the Highway Trust Fund, being principally about highways.

Secretary FOXX. Sure.

Senator, if you take a look at our proposal, it's a \$302 billion proposal over 4 years; \$199 billion of it goes directly into highways. And we suspect that with the advent of additional discretionary competitive programs that a substantial amount of the additional spending will also go into highways.

But there are reasons why we've taken the approach that we've taken. And, primarily, it is that our country is growing. By 2050, we're expecting 100 million additional people and 14 billion additional tons of freight that we'll have to move around this country. And, because of that, we've got to have a multi-modal approach and our proposal is a recognition of that.

So what I would say is that, in absolute dollars, the lion's share of this money is still going to go into our highway system, which we obviously have critical repair needs, critical new capacity needs, but it also recognizes that we have growth happening in our metro areas. We also have rural connections through transit and through rail that badly need to happen whether it's passenger or freight.

Senator THUNE. Since I've been associated with highway bills in the time I've been in the House and Senate, we've done three. This would be four. It has always been funded by the user fee. I think it was pointed out earlier, Senator Rockefeller and I, and some others on this Committee, also serve on the Finance Committee. We had a meeting on the Finance Committee last year in which a couple of the members on our side—some are more conservative members—expressed support for an increase in the user fee, in the fuel tax. The Administration has, in testimony in front of this Committee and others that I've been involved with in my time in the

Senate, by your predecessor that that's something the Administration would not support.

And the reason I raise that question is because the corporate tax reform that's used to fund this proposal is really one-time revenues. It's repatriation of funds. It's not the long-term solution that we're all talking about. It actually creates a steeper cliff at the conclusion that would have to be a filled up with a more permanent source of financing. So, the question I have for you: is the Administration open to or going to close the door on a user fee, a fuel tax, as a way of more permanently funding the highway program as opposed to something like this which is short-term or limited?

Secretary FOXX. Well, I appreciate the question.

And our proposal is our proposal. We believe that it strikes the right balance and actually adheres to many of the principles that we've heard articulated from members of Congress on both sides of the aisle. That is a desire not to raise rates and a desire to avoid adversely impacting deficits. This proposal, as we've articulated it, would accomplish that. And that is why we've put it together the way we have.

At the same time, we've also said that if there are other ideas that emerge from the Hill, we would listen to those ideas. And that's still true. I would point out, however, that the fuel tax has been on the table for quite a while. And even more so, if you look at the overall curve in the fuel tax, the curve is downward facing. And that's because of more efficient vehicles and the fact that the tax itself hasn't been indexed. So it's a tool that has been available to Congress over the last several years. We will continue to keep our ear to the ground and to listen for other ideas that may emerge.

Senator THUNE. But it is a tool. It has been available to Congress, but it's very difficult to feature a bill passed by Congress if the Administration has taken a hard stand saying I'm not going to sign a bill or entertain a financing mechanism that includes a user fee in increasing the gas tax. I mean, that's basically, in front of this committee, what position the Administration has taken.

I'm just curious because at some point we've got to find a long-term solution. And there are some of us who come from rural states where toll roads and vehicle miles traveled solutions just don't work. But I guess the purpose for the question is to find out if the Administration—if that's a position they will still adhere strongly to, or if they are open to consider that as a potential way of financing the highway program into the future as it has been financed in the past.

Secretary FOXX. Again, we believe our proposal meets a lot of the principles that many have articulated. We think it is the right way to go particularly given the urgency of the moment and the fact that we have, even the last heroic effort to get a reauthorization bill done, was a 2-year bill. That said, as I said before, our ears and our minds are open to what emerges from the Hill. We make no representations about how the Administration will ultimately approach what comes out but we certainly want to be in the discussion and at the table with you.

Senator THUNE. You would not rule it out?

Secretary FOXX. We are listening to what Congress says collectively.

Senator THUNE. That's what your predecessor said except that he ruled it out.

Secretary FOXX. At least we're consistent.

Senator THUNE. Except that he ruled it out.

I have one more quick question, Mr. Chairman.

The CHAIRMAN. And I'm with you—

Senator THUNE. OK.

The CHAIRMAN.—on the way you tried to pin him down there and he wouldn't answer.

[Laughter.]

The CHAIRMAN. That's called the influence of OMB.

Senator THUNE. I will.

The CHAIRMAN. You're better than that, Mr. Secretary.

Senator THUNE. I can come back to this later.

The CHAIRMAN. No, go ahead.

Senator THUNE. Well, this has to do with what happens if we don't fix this thing. And I hope that we do. We need a fix on this and I hope we can come up with a solution.

But what, if any, consideration has been given to ensuring that, if we have to fund projects and you're looking at how to distribute funds, that a large project in one state doesn't affect reimbursement for others in other states? Is the fact that some states have shorter building seasons a factor that's being considered in terms of how you look at that?

Secretary FOXX. In the event that we do reach insolvency, sir?

Senator THUNE. Right.

Secretary FOXX. Yes.

We, in the past, when this issue has been in front of the department, have basically worked with each state to identify what the great challenges are within that state. Invariably, there will be some states that have greater capacity to manage a short fall than other states and that will certainly be taken into account based on past history. And, our desire and our work will be to hold as few states harmless as we can based on the resources we have, but it will be a tough issue when there's less money and almost no money to meet our obligations.

Senator THUNE. OK.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

And thank you, Mr. Secretary, for being here today, and thank you for the Administration's leadership on the proposal that you brought in to fill the Highway Trust Fund including \$10 billion in dedicated Multimodal Freight program. We very much appreciate the fact that not only are you dedicating investments toward moving freight in America that you also are looking at ways to make sure that we prioritize this from a funding perspective. And so, we very, very much appreciate that.

And I appreciate it, in your opening statement, about the railcar safety issue. All across my state people are having this debate in our local communities. Practically every newspaper in my state has editorialized on the subject. I think the Spokesman Review probably said it best. One that said, "So, Spokane and communities across the Northwest are at the mercy of a lumbering Federal bureaucracy. We can draw up disaster plans. We can conduct drills. But, after that, we just have to cross our fingers and watch the trains go by."

And the reason why I brought the map up is because this is the train route. And as you can see, the train route goes through every major city in the Northwest. It would not be a totally different story, obviously, if it went through a more rural community but it's hitting every urban center of our state.

So this is a big issue for us and people obviously want to know. Today, your announcement will be helpful and giving transparency on emergency responders being able to access that information about what's being carried and when. So that's a positive step in the development.

But I guess my question is, if people don't comply with the previous voluntary standards that you set out or this response, is there any penalties for not responding to that if you're a shipper?

Secretary FOXX. Well, let's take both.

The safety advisory is not law. And that is what we are issuing today; to urge not using DOT-111s for the transport of Bakken crude oil.

Senator CANTWELL. And when should they be phased out?

Secretary FOXX. Well, we are under the rulemaking process, currently. We submitted to OMB last week a comprehensive approach to this. The rule is still under review but, what I would say is that we are moving as expeditiously as we can to provide certainty to the communities you just talked about as well as to industry. And as soon as that rule is out our position on the timeline will be known.

Senator CANTWELL. Well, I would just say this: I think my communities are thinking you're thinking more about industry than thinking about communities. And that is, if you look at what previously happened with the incidents and, now, what just happened in Lynchburg—and I get that this is a challenging question at where to draw the line. But, if we know that we want to get rid of these carriers that we don't think are a safe transport vehicle for the Bakken oil and we think it's unsafe, then we should come up with a date in certainty.

Making it voluntary, in my opinion, isn't going far enough. And to think now, from the Lynchburg situation, that one of the cars that may have derailed or exploded might even be a newer car, which may pose a question to us; is the newest car going to be safe enough?

Again, for these communities in my state, huge populations, a lot of transportation going through there. Just knowing that they're coming through there isn't going to be enough. And so, I would urge, DOT to—when you look at the, what is it, 8,000 percent increase and the amount of product now being carried. So what's

happened is an explosion of product being carried through this area and not the right response in safety regulations.

And so, we're urging a mandatory date for getting rid of these DOT-111 cars and a mandatory rule on safety. Because we just think it's too much for people to ignore the voluntary agreement without policing with so many people at risk as we saw in Canada and as we saw in Lynchburg and as we're seeing in other areas.

So I thank you, though. I thank you for your responsiveness.

Secretary FOXX. Thank you.

And, Senator, rest assured that we agree with you. The voluntary measures that we've undertaken, by virtue of the call to action that we did with industry a few months ago, were intended to be interim steps until a rule was actually promulgated and finalized.

And, again, we're working as hard and fast as we can to get that done. We know the certainty matters. And it is because communities across America have had concerns about this that we issued the emergency order which is binding on the industry to notify communities as to what is moving through their communities when it comes to this order.

Senator CANTWELL. Will your rulemaking be done by the end of the year?

Secretary FOXX. It is my intention that it will. And I hope to have it done sooner than that if we can.

Senator CANTWELL. Thank you.

Secretary FOXX. Yes.

The CHAIRMAN. Thank you, Senator.

Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

But I did want to bring up the fact that we lost Jim Oberstar this week. Congressman Oberstar died in his sleep and suddenly. And, as you know, he loved transportation. And he talked about it.

The CHAIRMAN. He loved transportation so much, and I apologize to my colleague—

Senator KLOBUCHAR. Yes.

The CHAIRMAN.—he came, several times, to West Virginia Appalachian Regional Commission meetings to help.

Senator KLOBUCHAR. Yes.

The CHAIRMAN. And he had nothing to gain from it.

Senator KLOBUCHAR. And for those members that never worked with Jim, he's Minnesota, Northern Minnesota, Congressman; 47 years of experience in transportation, 11 as a staffer and 36 as a Member of Congress. So, anyone that drives over roads and bridges this week should think of Jim. And, mostly, anyone that goes on the bike trails.

He was ahead of his time, Secretary Foxx, and really visionary about bike trails and how much Americans would use bike trails. So we miss him very much in our state. And his funeral is tomorrow.

I wanted to talk with you, just following up on Senator Cantwell's questions, on rail. I know she talked about some of the

safety issues and other things but one of the things that we're really concerned about right now is the service delays and interruptions. We have so much use of rail in the upper-Midwest with oil and with other energy sources that some of our agriculture producers are really having issues with accessing rail. And I wanted to make sure you were aware of that as well as some of the pricing issues.

Secretary FOXX. Yes, I am.

And I know that the Surface Transportation Board has developed some preliminary covenants with industry to try to release some of those bottlenecks. But this is also underscoring part of what I said at the outset, which is that we have growing freight activity in this country. And without substantial, new, more robust investments in infrastructure, we're going to find ourselves more bottlenecks, more congestion and more delays. And that is one of the reasons why a substantial investment today is so important.

Senator KLOBUCHAR. Very good.

And I would echo what some of my colleagues talked about with the Highway Trust Fund and how important that is. I know that Senator Boxer has been working on that.

I brought up trails and I worked hard with several of my colleagues to ensure that the Recreational Trails Program was preserved in MAP-21. As you know, Recreational Trails is a foundation for our state trails across the country. And I recently sent a letter with Senators Risch, Burr and Shaheen and 20 other senators, urging the program's continuation in the next transportation reauthorization bill. And I wanted to get your thoughts on our TP program and its importance to trail users.

Secretary FOXX. Well, I was in Indianapolis just a couple of weeks ago. And this is a city that has managed to develop substantial trails that are starting to bring population into the city. And that population is using the existing grid networks within that city, leveraging existing investments in infrastructure, so that they're avoiding some of the green-filled development that can sometimes result in loss of environmental integrity in an area and also add cost.

And so, we're seeing in this country a resurgence of these types of investments that improve quality of life that attract population, leverage existing infrastructure and help communities grow. And it's a very important part of the life of communities across America.

Senator KLOBUCHAR. And we appreciate it, by the way, your visit to Minnesota; not to go from Indianapolis to Minneapolis but that was the second state you visited. And we do want to invite you back in June for the opening of the Central Corridor Light Rail; something Mr. Rogoff has worked very hard on, that links Minneapolis and St. Paul. So check your calendar for that.

And also, as you and I discussed, some of the really needy transportation programs and projects across our state, including Highway 10 and Anoka, but I just wanted to end, in my last minute or so here, to ask you about NHTSA.

Senator McCaskill chaired a hearing that I'll never forget, the hearing about the GM recall and what was happening there. And we have a woman in Minnesota, Natasha Weigel from Albert Lea, who was just going down the road and basically stalled out. And

her car went 70 miles per hour and veered off the road, slammed into a grove of trees. She was killed, her friend driving the car was killed, and one of the things that I realized, as I went through the evidence and listened to the hearing, was just that you had over 200 complaints to NHTSA about this ignition problem. And when I heard about how it was first viewed as a problem with the airbags, there was, nevertheless, a lot of evidence there about the ignition switches.

And I remain deeply concerned about NHTSA's ability to spot these trends. How do we fix it? Do you think 11 staff members are sufficient to review the more than 40,000 vehicle safety complaints NHTSA receives every year?

Secretary FOXX. Thank you for the question.

And, obviously, the GM recall issues remain under investigation by NHTSA. I have also asked our Inspector General to do a self-diagnosis on this to assure ourselves that we're either doing everything we can to catch these things early or if there are additional steps that we need to take going forward, that those steps will be taken so that this type of activity doesn't happen again.

But, having said that, NHTSA is an agency that has had, over the last 7 years, 1,200 or so recalls affecting 95 million vehicles. And we, as an agency, have prided ourselves on the effectiveness of our safety standards, which set the standard for the world quite frankly. If there's a better way, going forward, to prevent the types of injuries and deaths that have occurred in this situation, we will find it. And that's our mission as an agency. And we always endeavor to get better. And if we can, we will.

Senator KLOBUCHAR. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Johnson.

**STATEMENT OF HON. RON JOHNSON,
U.S. SENATOR FROM WISCONSIN**

Senator JOHNSON. Thank you, Mr. Chairman.

Mr. Secretary, how many people have been killed in these rail accidents? In the most recent ones?

Secretary FOXX. Well, in the most recent ones, we have not had deaths in the U.S. but in Canada there were 47.

Senator JOHNSON. Those are all oil, transporting oil; correct?

Secretary FOXX. That's correct.

Senator JOHNSON. There's another way of transporting oil; isn't there?

Secretary FOXX. There are many ways. Yes, sir.

Senator JOHNSON. I mean, what's the most efficient; pipelines?

Secretary FOXX. There are lots of ways.

Senator JOHNSON. Has there been anybody killed in a pipeline accident recently?

Secretary FOXX. There have been people killed in pipeline accidents.

Senator JOHNSON. Recently? Forty-six?

Secretary FOXX. I have to ask our PHMSA Administrator.

Senator JOHNSON. Is the Administration at all, considering—I realize Keystone XL Pipeline is a different issue—but are we consid-

ering other pipelines to take some of the burden off the rail system?

Secretary FOXX. We are modal-agnostic at DOT. If there is a mode to move something, we try to make sure the safety standard is met. So, however it moves, our job is to make sure it moves safely.

Senator JOHNSON. But would part of your job, also, would be to make sure it moves as safely as possible and cost effectively for the economy?

Secretary FOXX. Well, our job is to ensure that however stuff is moving it's moving safely, sir.

Senator JOHNSON. I believe I'm correct that most of the capital expenditure for freight rail is actually paid by the freight companies themselves, the rail companies themselves; isn't it?

Secretary FOXX. If you take out the cost of the infrastructure that they ride on.

Senator JOHNSON. So educate me on that. So what does the Federal Government pay in terms of infrastructure on the freight rail system?

Secretary FOXX. Well, it depends, for the short line rail systems we have historically provided support to ensure that the track is safe. The Class 1 railroads tend to self-fund their track more so than the short line railroads do.

Senator JOHNSON. So, out of your proposed budget here, how much would be spent on freight rail systems?

Secretary FOXX. Well, we would propose to put \$19 billion into rail.

Senator JOHNSON. That's primarily passenger rail; right?

Secretary FOXX. Primarily passenger rail but, because in many cases passenger rail and freight rail are running on the same track, there will be benefits to freight rail as well.

Senator JOHNSON. OK.

I was a little confused because you seem to be making the case that a lot of the increase in spending here is about the increased rail traffic for freight, but it's really the freight companies that, the rail companies, that pay for that themselves.

Secretary FOXX. Well, a lot of the—

Senator JOHNSON. I mean to a great extent. It's primarily their capital expenditure.

Secretary FOXX. There is no substitute for predictable, sustained, Federal investment in our infrastructure system. And, when it comes to non-Class 1 rail, we have some significant safety and efficiency needs in rail.

Senator JOHNSON. Current transportation spendings are, what, about \$45 billion?

Secretary FOXX. Roughly.

Senator JOHNSON. And the gas tax revenues are about \$34 billion? So we've got about \$11 billion per year deficit?

Secretary FOXX. I think it's closer to about 15.

Closer to \$18 billion, sir. Sorry.

Senator JOHNSON. OK.

So what is the outlay, then, versus the revenue?

Secretary FOXX. I would say we are generating about \$34 billion through the gas tax. And so, if you add, about \$52 billion.

Senator JOHNSON. OK. The number I have, about \$45 billion.

OK, so you're going to propose increasing that to about \$75 billion per year. You know, so you're going to be spending more than about a \$40 billion deficit?

Secretary FOXX. Well, we're trying to both address the shortfall in the Highway Trust Fund but also to increase investment in our Nation's infrastructure.

Senator JOHNSON. I understand.

By the way, that's a top priority.

Are there any discussions within the executive branch there, interagency, about prioritizing the spending as opposed to looking at increasing taxes? Because I actually think infrastructure spending is a high priority of government. Who else is going to do it? States and the Federal Government?

Any discussion in terms of taking, you know, for example, some of the GAO reports where you have duplicated programs and maybe take some of that lower priority spending, some of the duplicated spending, and allocate that toward transportation spending in infrastructure?

Secretary FOXX. Well, it's an interesting question that you raise because we have had experience in this Administration, in the DOT, with improving the efficiency by which projects move through our permitting process.

Senator JOHNSON. I do know there are about 55 duplicated programs in DOT. Have you analyzed those? And have you canceled any of those programs?

Secretary FOXX. Well, we are working as hard as we can to ensure efficiency. And there are efficiency provisions in our proposal that focus on streamlining and making sequential permitting processes more concurrent.

Senator JOHNSON. But, I mean, specifically to Senator Coburn's wastebasket, are any of those duplicated programs within the Department of Transportation, have any of those been eliminated?

Secretary FOXX. I'd have to take a look, sir, and respond back to you.

Senator JOHNSON. OK, I appreciate that answer. Thank you.

Thank you, Mr. Chairman.

Secretary FOXX. Thanks.

The CHAIRMAN. Thank you, Senator Johnson.

I warn members that we have a 3:45 vote or two. And so, we want to get everybody included.

Senator Markey to be followed by Senator Fischer.

It was Senator Fischer followed by Senator Markey, but he came in at the last moment; reclaimed his place.

Senator FISCHER. Thank you, Mr. Chairman.

I'm sorry, Senator Markey.

The CHAIRMAN. Oh.

Senator FISCHER. Who are we going with here?

The CHAIRMAN. He actually came in.

Senator FISCHER. Oh, OK.

The CHAIRMAN. OK.

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Mr. Chairman.

Mr. Secretary, I want to raise some concerns about what is not in the Administration's transportation bill proposal. And what is not in the Administration's transportation bill is a single measure that would prevent a car company from keeping a dangerous safety defect for a decade in the future from being public.

We have seen so many reports about how GM treated consumers who complained that their cars shutdown on their own even after GM knew it had a problem. At the time that Benjamin Hear was killed in a Pontiac G5 in December 2009, GM had conducted five internal studies into the ignition switch problem. But GM still told his mother that the accident wasn't related to a safety defect.

So it should be clear to everyone here that it is much more difficult to cover up evidence and dismiss consumer complaints if the evidence is publically available. That is why I introduced the Early Warning Reporting System Improvement Act along with Senator Blumenthal to greatly increase the information made available to the public about potentially defective vehicles.

Our bill calls for automobile companies to automatically provide NHTSA with copies of the documents that first made them aware of a fatality involving their cars and for NHTSA to make those documents available to the public. One way to illustrate just why our bill is needed is to look at what GM provided to NHTSA, when NHTSA took the unusual step for NHTSA of asking for more information about some of the GM Cobalt fatalities it learned about.

I'd like to submit this document for the record. This is a document tracking this relationship between GM and NHTSA on the Cobalt issue.

[The information referred to is contained within Committee files. Also available at [www.markey.senate.gov/imo/medic/doc/Request toGMfromNHTSA2007NHTSA-MARKEY%202.pdf](http://www.markey.senate.gov/imo/medic/doc/Request%20toGMfromNHTSA2007NHTSA-MARKEY%202.pdf)]

Senator MARKEY. By the time NHTSA did ask for more information, what GM submitted to NHTSA in 2007 proves that GM knew that the contractor NHTSA used to investigate the accident that killed two Wisconsin teenagers was doing so because of concern that the airbags had not deployed. Even more shockingly, GM also sent NHTSA a February 2007 analysis and reconstruction report done by the Wisconsin State Patrol Academy that found that the ignition switch had turned the engine off at the time of the crash preventing the airbags from deploying. The report also references other reports of similar problems that the Wisconsin investigators uncovered.

We already know what happened next. Nothing. NHTSA didn't begin a defect investigation; GM didn't recall the vehicles; and these documents remained secret for years. They're being released publically. Publically, for the first time today; this report that I have in my hand. If they had been automatically provided to NHTSA, and if NHTSA had made them public, consumers, our auto safety experts, could have identified these defects much sooner and prevented additional deaths and injuries.

Secretary Foxx, will you support the language that Senator Blumenthal and I are asking to require the documents that first

alerts automakers to a fatality involving their vehicles be provided to NHTSA and made publically available?

Secretary FOXX. Senator, I will certainly take a look at the bill and I will also offer our team to provide technical assistance to you and to Senator Blumenthal should you wish to enter that conversation as this proposal moves forward in Congress.

Senator MARKEY. Conceptually, do you have any problem with the information being made public when an accident occurs that leads to a fatality that the information be sent to NHTSA? Do you have any problem with that?

Secretary FOXX. Well, I think in the past there've been several challenges including not the least of which being individual privacy. But, I think there's some promise to what you're proposing and I would offer what I've just said, technical assistance, and I'll take a look at the bill.

Senator MARKEY. If the privacy issues are overcome and it's just generic information that's passed on, would that then alleviate your concern and could you then support?

Secretary FOXX. I understand what you're driving at. I think it's a laudable goal. I look forward to taking a look at the bill.

Senator MARKEY. So you're not making a commitment?

Secretary FOXX. I'm not making a commitment right now, sir.

Senator MARKEY. OK.

Well, I think, obviously here, that we've had a huge problem at NHTSA and we've had a huge problem within the auto industry. If this information had been made public, we could've avoided this entire mess that GM is going through right now. And I think it's imperative for the Administration to provide this information from the auto industry to NHTSA so that it is there in the public domain so that we can avoid this catastrophe which is effecting hundreds of, if not more, families all across our country.

And I think that we cannot allow automakers to keep the very same accident report details secret in the future. And I just wish that we were hearing a more affirmative answer from the Administration on this. I just think that we cannot go through this whole situation and not have an answer for the American people.

I thank you, Mr. Chairman.

The CHAIRMAN. I thank you, Senator Markey. And you can include me in that group.

Senator MARKEY. Thank you.

The CHAIRMAN. Senator Fischer.

I'm sorry. I apologize.

STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Well, thank you, Mr. Chairman. I do thank you for holding this—

The CHAIRMAN. Senator Markey has been here for 112 years.

[Laughter.]

The CHAIRMAN. He has a lot of seniority.

Senator FISCHER. But on this committee I think I have seniority, too.

[Laughter.]

Senator FISCHER. But I do thank you for holding this hearing.

Senator MARKEY. I am called junior for the first time in 40 years. I love it. I love it.

Senator FISCHER. Good deal. Thanks.

Good to see you, Mr. Secretary.

Secretary FOXX. Good to see you, Senator.

Senator FISCHER. I know you're aware of the issues that we were having in Nebraska with the Federal Highway Administration and also with the whole NEPA process.

I don't know if you've heard the updates on where we are there but, you know, the concern was just the process causing a higher cost, more time, projects not getting done.

I would like to tell you, though, that the Acting Administrator, after meeting with me and we went over a lot of these different problems and issues, traveled to Nebraska; had meetings; things are moving along; we're forming an action plan; and some things are moving forward. So I wanted to keep you up to date on that. And I hope we'll continue to see that cooperation between the Federal and state government so that we can monitor the situation and make sure we continue to move forward and are able to accomplish the goals we all have, making sure that these big infrastructure projects are going to be completed and cost effective in, also, a timely manner.

So thank you.

Secretary FOXX. Thank you.

Senator FISCHER. As you know, agricultural truck drivers as well as retailers and wholesalers, as they're delivering these farm supplies, they're currently granted an exemption from the hours-of-service rules if they're operating within that 150 mile radius. And that's been very helpful for folks that are planting and harvesting. And if they didn't have that exemption, they would have to have the cost of a larger fleet of trucks, we'd have to see more drivers and I think we'd see some missed production opportunities as well.

Do you believe that that's important to maintain that exemption on the hours-of-service for agriculture? Are you confident that we can maintain that?

Secretary FOXX. I believe that, in the situations where we've made exceptions, they've been necessary exceptions. And that's buttressed against our overall goal of assuring that we are adhering to the highest level of safety. And as situations emerge, we will continue to try to do the best we can to strike the right balance and that's always what our goal is.

Senator FISCHER. OK. I hope you will look at that in a serious manner. I think it's important to keep that 150 mile radius there for these individuals so they're able to continue to provide those opportunities down the road.

So thank you very much.

Secretary FOXX. Thank you.

Senator FISCHER. With tolling—

Secretary FOXX. Yes.

Senator FISCHER.—and the GROW AMERICA Act, it would lift the ban on tolling on the interstates. If we look at the details of tolling and what a proposal on that would look like, would the states be responsible for the setting up of that infrastructure? Are

we going to see the tolls just be paid to that segment of road where the tolling takes place?

I think we'll see additional stress on parallel highways when you have tolling on an interstate system out there. But, in my opinion, it doesn't always meet the goal of how we finance our highways and roads and especially if the money is only going to be used for that segment of highway that's there. Also, I think the truckers, those small business people, the independents that are out there, they really are hit hard on toll payments because a lot of times they pay that out-of-pocket. I would assume that your department is going to look at all those impacts before a final ruling is put out on that or a final proposal is put out?

Secretary FOXX. Yes. Let me talk about this for a second, if I might, Senator.

Our proposal on the tolling issue is actually more limited than has been widely reported. Essentially, tolling, under our proposal, only becomes available if a Governor of a state requests it. And, even then, it has to be approved by the department.

And we believe that having the tool available is useful. But, as you point out, it is not a wholesale solution to the transportation challenges we face. Moreover, we are not endeavoring to draw out the revenue from tolls into the Federal system to pay for our bill. And I just wanted to make sure I was very clear about that.

But to your point, tolling can be a useful tool. But, as we look at the overall infrastructure deficit and, in particular, the challenges that are upon us over the next couple of months, that is not the solution to the urgent problem that we're talking about right now of the Highway Trust Fund.

Senator FISCHER. And I agree.

I guess I wasn't implying that the tolls would go to the Federal Government but my understanding is they are used for that specific segment of highway where the tolling takes place.

Secretary FOXX. That is correct.

Our proposal would make it available, again, under the conditions I just talked about where the desire would be to better maintain the facility on which the toll is charged or to address congestion in the particular area that we were discussing.

Senator FISCHER. Right.

And have you been in any kind of conversations with truckers and the effect that any tolling would have on them?

You know, when people have a take-home pay of, maybe, \$40,000 or \$50,000 a year when they are these small businesses, that's going to be significant for them. Have you had any conversation with them?

Secretary FOXX. We have engaged in discussions with a variety of stakeholders. We will continue to do so as we move toward a bill. And I just would say that this is evidence of the overall challenge of investing in our nation's infrastructure at the scale that we need to which is that, in order to do it, we have to, in my opinion and in our opinion, have a variety of tools available to get there. In some cases there will be tools that will be relatively incremental, but in other cases, as is in the case of the Highway Trust Fund, we need a big answer there.

Senator FISCHER. Thank you, sir.

Secretary FOXX. Thank you.

Senator FISCHER. Thank you, my boss, Mr. Chairman.

Senator McCaskill——

**STATEMENT OF HON. CLAIRE McCASKILL,
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL [presiding]. Thank you.

Senator FISCHER.—are you the Acting Chair?

Senator McCASKILL. I am Acting while Senator Rockefeller is out. The votes haven't begun yet, but he has gone over there to vote and he'll come back as soon as he has voted.

Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thank you, Madam Chairman.

Thank you for being here today, Mr. Secretary. Thank you for your able beginning and your work as Secretary. I'm proud to have voted in favor of your confirmation and I know you're taking the lead on many of these transportation issues.

I want to join in the remarks, fully, made by my colleague, Senator Markey. He and I have introduced a bill and, because I'm lacking in time, I'm not going to repeat a lot of what he said, but I do hope very deeply that you will, as promptly as possible, endorse our bill. And that you will also continue to cooperate with the investigation underway by the consumer protection subcommittee of this committee very ably and energetically being conducted by my colleague, Senator McCaskill.

I want to ask you, first of all, were you as alarmed as I am, and even appalled, by the latest news of the recall announced with regard to 56,000 Saturn Auras for gear shift cable defects that apparently began as many as a five or 7 years ago?

Secretary FOXX. We're always alarmed to learn of defects, particularly, ones that have been out there for a while.

Senator BLUMENTHAL. And that one comprised a roll-away hazard that literally caused crashes and injuries that were documented, that came to the public's attention, only within the last 24 hours. I find that not only alarming but appalling.

Secretary FOXX. And to speak to that, that's one of the reasons why, in our proposal, we do have additional tools around imminent hazard. We also would increase the penalties for things like timeliness issues from \$35 million to \$300 million to ensure that the level set is there for deterring untimely recalls.

Senator BLUMENTHAL. And let me ask you about the GM recall. And my view is that NHTSA really was almost complicit in its laxity and lapse of oversight during the years, in fact an entire decade, when these defects should have prompted the government watchdog to be awake and active in preventing the accidents and deaths and injuries that occurred.

GM issued a special order that's mentioned in a letter that you wrote to me and Senator Markey on May 6. And I ask, Madam Chairman, that it be made part of the record.

Senator McCASKILL. Without objection.

[The information is retained in Committee files.]

Senator BLUMENTHAL. In response to our letter to you, you noted that GM, as a result of your special order, has issued a new interim guidance to consumers. Is that correct?

Secretary FOXX. That's correct.

Senator BLUMENTHAL. Only as a result of your special order did GM issue its new notice. And, in that notice, it gave consumers, what I regard frankly, as the height of confusion. Because, in that April 30 notice, it said, "If your car is jostled or jolted, it's possible for the key to move from 'run' to 'accessory' especially if you have a heavy keychain," indicating that jostling or jolting the vehicle could cause a danger. And then, in the next paragraph, it said that, "Tests show the vehicles are safe to drive if you take everything off your key ring and drive using only the ignition key."

Thereby, completely negating the warning about jostling and jolting the vehicle being a source of extraordinary risk; as I have said repeatedly. Would you commit to me to ask GM to ask for a clarification of that notice to consumers?

Secretary FOXX. I will certainly take that under advisement and pass your comments along to GM. I would also point out that we are in the midst of an investigation of this matter. And my belief is that, as that process moves along, we have an opportunity to beef up not only the interim guidance but also the ultimate outcome for consumers.

Senator BLUMENTHAL. Well, the ultimate outcome here is going to be continued crashes and potential deaths or injuries unless action is taken now. So I urge you to order GM to clarify this order.

Now, you note in the letter, and the letter states, "In appropriate circumstances, NHTSA may require a manufacturer to advise owners not to drive their vehicles until a safety related defect is remedied."

That's a quote from the letter. You have authority to order GM to advise owners not to drive their vehicles. I can't imagine a case more appropriate for that kind of order than this one. Would you agree?

Secretary FOXX. We've taken extraordinary measures in this instance, based on our data-driven processes, to look at the interim guidance that GM has offered. And, based on the data that we have reviewed and, frankly, taken some extraordinary steps to have our engineers basically recreate some of the testing that was done by GM in the course of developing their interim guidance, NHTSA has assured me that what GM has proposed as interim guidance, which is effectively folks not using other keys on a keychain, but putting the single key in the ignition and using the vehicle, that that remedy is a remedy that can be relied upon until the recall is completed.

Senator BLUMENTHAL. Will you commit to making that data and information and testing public right now?

Secretary FOXX. I will work with NHTSA to make as much of it available as we can. And if there's—

Senator BLUMENTHAL. Why would you not make it?

Secretary FOXX. If there's a reason why it can't be, we will certainly make that known to you.

Senator BLUMENTHAL. Well, I'm going to ask that that information, all the testing, both GM's and NHTSA, be made available

publicly right now so that we can all be aware of what has been done to satisfy NHTSA's obligation, which frankly was unfortunately neglected in the past, well before you took office. I also am going to ask that GM's tests and information be made public. Evidently, they've been submitted to you. Mary Barra, the CEO to GM, committed to make them available to us but still has not done so.

Secretary FOXX. Well, I will say again, something I've said before, which is that NHTSA, over the last 7 years, has issued more than 1,200 recalls affecting 95 million vehicles. The body of evidence is that it's an incredibly effective organization.

As I've said before, if there are ways to improve the work that NHTSA does, we will find a way to implement reforms and improvements, including perhaps some of the recommendations that you've mentioned today as well as Senator Markey. I haven't had a chance to look at all of the text of your bill, for instance, but I've committed to doing so and hopefully we will have more dialogue.

Senator BLUMENTHAL. Well, I very much appreciate your answers to my question. I hope you'll be responsive to the specific requests that I've made.

I thank the Chairwoman for her indulgence. I'm over my time as it is but, also, for her great work on this issue. Thank you.

Secretary FOXX. Thank you.

Senator MCCASKILL. Thank you, Secretary, for being here. It's good to see.

Secretary FOXX. It's good to see you.

Senator MCCASKILL. I want to drill down a little bit on the NHTSA issue. And I want to talk about the budget.

As you know, within NHTSA, there is the safety defects investigation component of NHTSA. Now, I don't think anybody would argue that over the last decade this has become a more complex, a more demanding area, than ever before because not only do you have the traditional safety defects to be concerned about, you now have a whole other layer of technical advancements where, in many instances, you have computers driving cars. Computers that are much more integrated into every function of an automobile, to say nothing of the next generation cars that are all electric and so forth.

What is really disconcerting to me is how stagnant the budget has been for safety defects investigations. That it has really been essentially flat-lined for a decade. Now I know that this budget was prepared before the proverbial whatever hit the proverbial whatever on GM but, having said that, the notion that we are looking at \$10 million in a relatively small staff, and we're asking these people to do a really heavy lift. You know, there's no question that we've got Monday morning quarterbacking going on about why NHTSA didn't find this. And I will give NHTSA credit, they have not been "Oh, poor us." But, frankly, nobody has even asked for more. It's not as if this has been a request that's been made and turned down.

So would you like an opportunity to revisit the budget line for safety defects investigations and look and see whether or not you actually have the resources you need to do this?

Secretary FOXX. We would be happy to take that request and submit back to you a response, Senator. I think it's a great question that you ask and it's something that we are certainly aware of; the staff constraints that we have. And I would love to have an opportunity to come back to you on that.

[Information requested follows:]

We appreciate the opportunity to revisit the budget request for the safety defects investigation program. In the President's Fiscal Year (FY) 2015 Budget, NHTSA requested \$10.6 million for the safety defects investigations program, which is consistent with the FY 2014 request. However, this request is for program costs and does not include salaries and benefits for Office of Defects Investigation (ODI) employees. While NHTSA did not ask for additional program dollars in the FY 2015 request, the Agency did request six additional positions for ODI. And in the President's FY 2014 Budget, the Agency requested four additional positions for ODI.

ODI's work is important to all highway users, as is evident from the recent recalls of Toyota vehicles and General Motors vehicles. To increase the effectiveness of ODI's work, we believe that the following steps are necessary: enhance ODI's ability to use the latest technology to help identify possible safety defects; increase the public's awareness of reporting safety problems with their vehicles or vehicle equipment to NHTSA; and provide ODI with the personnel resources to address potential safety risks.

Looking ahead, areas of new opportunities for safety defect investigations could include an advanced data mining and analytical tool, incorporation of business intelligence to enhance the ability of defect screeners and investigators to identify new defect trends. On another front, in the future NHTSA may wish to undertake a consumer awareness and outreach campaign as a large portion of the data received about defects comes from consumers.

DOT looks forward to working with Congress to ensure that NHTSA is adequately funded to fulfill its safety responsibilities and respond effectively to emerging safety issues through these and other activities.

Having a sufficient number of qualified staff is critical to an effective safety defects investigation program. ODI currently has eight defect screeners and four Early Warning data analysts to identify potential safety defects, and 16 investigators to conduct formal investigations. With over 250 million registered vehicles in the U.S., this creates a tremendous data collection and analysis burden that will only continue to grow.

Senator McCASKILL. If you combine all the engineering that is in residence at all of our manufacturers, and then you look at the safety defects investigation component of NHTSA, it really is David and Goliath. I mean it really is a very small effort that can be put forth under any circumstances.

So I think it's time that your agency really take a—and, by the way, Vehicle Safety Compliance, they got a million dollar increase this year. And I'm not really sure that their function is as important as the investigation's function. Because, it's the investigation function that keeps the car manufacturers honest. It's one thing once a car manufacturer has come clean and said, "We've got a defect and you've got to make a decision on a recall."

I believe that's what the safety compliance people do. But it's a whole other deal to say, "You guys have to go find it," when the car manufacturer is trying to hide it, which is what we have in this instance.

Let me also go briefly to—before my time is up and I know votes have been called and we'll have to figure out whether we adjourn or whether we deploy waves of sitting chairmen while we try to go vote.

The public-private partnership on funding infrastructure, I don't know if you've looked at the legislation that Senator Blunt and Senator Bennet and I and others, and maybe even some of the oth-

ers that are still here, have done is Partnership to Build America Act, which I think is a really elegant idea. The idea is we do \$50 billion worth of bonds. It would go out in an auction setting to companies that wanted to repatriate profits. And they would bid how high a tax they're willing to pay to repatriate the money. So maybe you'd put out a trench of \$5 billion, maybe, hypothetically General Electric wants to bring back \$5 billion. They'd say, "You know, we'll pay 10 percent tax on that."

Well, maybe Apple wants to bring back \$5 billion. They say, "We'll pay 12 percent."

Whoever is willing to pay the highest tax for repatriation would secure the bonds, would allow them to repatriate the money and then those funds would strictly be used to leverage private and state and local money for infrastructure development. I think it's a nifty idea and I think it works on so many levels for the influx of money we need right now, immediately, because of the crisis you eloquently described in your statement.

Have you had a chance to look at it? And is there any chance we could get the Administration to give a seal of approval on this?

Secretary FOXX. We will take it back to the Administration. And, certainly, it's consistent with our view that we've got to have more tools in the toolbox as a nation.

The infrastructure deficit we have as a country is massive. It's estimated at \$3.6 trillion. And any way that we can find to add capacity to build our infrastructure is very consistent with what we're trying to do with the GROW AMERICA Act.

Senator McCASKILL. We'll look forward to hearing back from you.

Secretary FOXX. Thank you.

Senator McCASKILL. Thank you for being here.

Secretary FOXX. Sure.

Senator McCASKILL. Senator Booker.

**STATEMENT OF HON. CORY BOOKER,
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Thank you, Chairwoman, very much.

Trying to be respectful of the time, and my colleagues who may not have spoken yet, I'll try to be as brief as possible. But I would be remiss, this is my first time to address you as Senator and have you in a hearing. And I just want to say for the record, I've had the privilege of knowing you for many, many years. We were both peer mayors. And, if your service in your current capacity is anything similar to your service as mayor where you focused on economic growth, economic expansion, economic opportunity, and really fighting for those who are dealt bad cards, I think you're going to be a tremendous leader. And I look forward to working with you especially as we look at some of the big issues from FAA reauthorization to the current issues before us right now. So it's a privilege to sit across from you in this capacity.

To go real quick, you know, obviously New Jersey is—and I don't want to repeat a lot of the very important things that were brought up. And so, skipping to some of the specific concerns. New Jersey is obviously a highly dense transportation super structure. A significant amount of the freight that comes into the United States is coming through our state. We have key transportation nodes. And

I'd like to zero in on one of those nodes that has me really, particularly, concerned right now. If I can, Chairwoman, submit—or Chairperson——

[Laughter.]

Senator HELLER. I'm with you.

Senator BOOKER [presiding]. I'm the Chair? Let the record show, this is my first time chairing the Commerce Committee.

Senator SCOTT. Will the Chairman yield then.

[Laughter.]

Senator BOOKER. I'm happy to take the power. The power I feel right now is tremendous.

But I would like to enter into the record, without objection, from my dear friends, Senator Scott and Senator Heller, I'd like to put into the record an article about the Hudson Crossing.

Without objection?

Senator HELLER. Yes.

Senator BOOKER. Without objection, thank you very much.

[The information referred to follows:]

By Dana Rubenstein, May 5, 2014

“CLOCK TICKING ON HUDSON CROSSINGS, ALBANY WARNS”

The end may be near for the New York region's cross-harbor rail tunnels, with no good alternative in sight.

“I'm being told we got something less than 20 years before we have to shut one or two down,” said Amtrak C.E.O. Joseph Boardman at the Regional Plan Association's conference last week at the Waldorf Astoria. “Something less than 20. I don't know if that something less than 20 is seven, or some other number. But to build two new ones, you're talking seven to nine years to deliver, if we all decided today that we could do it.”

Tom Wright, the Regional Plan Association's executive director, described Boardman's remarks as “a big shock.”

“I've been hearing abstractly people at Amtrak and other people at New Jersey Transit say for years the tunnels are over 100 years old and we have to be worried about them,” he said. “To actually have Joe put something concrete on the table, less than 20 years . . . Within my office, there was a level of, ‘Wow, this is really serious.’”

New Jersey governor Chris Christie spiked plans to build two new rail tunnels under the Hudson, likely leaving the metropolitan region for the next quarter century with all of two rail tunnels to carry New Jersey commuters into Midtown Manhattan. Those two tunnels are more than a century old and carry more more than 160,000 passengers a day. Hurricane Sandy flooded them and caused a lot of damage. They are also a dangerously narrow chokepoint on the one of the busiest rail corridors in the world.

The state and federally financed project called Access to the Region's Core would have doubled the number of cross-Hudson tubes and relieved that bottleneck. Construction had already begun when Christie pulled the plug, a putative cost-saving measure that was also meant to demonstrate his state's political independence, and rededicated some of its funding to repairing the Pulaski Skyway.

Senator Chuck Schumer last year called Christie's decision “one of the worst decisions that any governmental leader has made in the 20th century, or the 21st century.”

Amtrak has since come up with a new, still-unfunded plan called the Gateway Program. Like A.R.C., it would build two new tunnels under the Hudson River. Amtrak's literature puts the target completion date at 2030, but Boardman, recounting a panel discussion he'd attended earlier that day, said the panel's consensus was “25 years if you're lucky.”

By his lights, that's not nearly soon enough, particularly with what he describes as at least a half-billion dollars' worth of Hurricane Sandy-related damage. That could pose some very big problems for the New Jersey commuters and regional rail travelers who rely on those tunnels to get from New Jersey to New York, and back again.

"Today those two tunnels carry 24 trains per hour, 24," he said. "If you take it to one tunnel, typically you'd assume 12. Not so. Six trains per hour. Six. Because you gotta get them in and get them out. Six trains per hour. Amtrak does four. So if Amtrak's selfish and owns the infrastructure and says we're gonna do our four, well it doesn't matter whether New Jersey Transit gets two or not, because with two they're dead anyway. You can't deliver what we were gonna deliver."

"Sorry, we are going to have to decline comment across the board," said William Smith, a New Jersey Transit spokesman, when asked to respond.

When I asked Craig Shultz, an Amtrak spokesman, who told Boardman that the tunnels had 20 years, tops, he said he wasn't sure.

"As you know the Hudson River Tunnels are more than 100 years old and were filled with salt water during Super Storm Sandy, which can be very corrosive," he said. "Amtrak is working with an expert to assess the condition of the tunnel structures since the storm, and that work is ongoing."

"I think the point Mr. Boardman was making in his comments at the RPA Assembly is that damage from Sandy accelerated what was already an urgent need for additional tunnel capacity between New York and New Jersey," he continued. "We expect that the tunnels are going to need major rehabilitation, which can only happen with prolonged service outages permitted by a new tunnel."

Christie's office didn't respond to a request for comment on Boardman's remarks.

<http://www.capitalnewyork.com/article/city-hall/2014/05/8544757/clock-ticking-hudson-crossings-amtrak-warns>

Senator BOOKER. This is all going to go to my head; forgive me.

But this is an article about the deterioration of the Hudson Crossing which is the busiest river crossing in the United States of America and a critical part of our national economy. It is a report that basically says two of the Amtrak tunnels between New York and New Jersey—the CEO of Amtrak is quoted as saying that they have about 20 years left of use before one or both of those tunnels need to be closed.

The tunnels carry over 160,000 passengers; as I said, again, the busiest river crossing in the United States of America. In the aftermath of Superstorm Sandy, especially as we see a frequency of these storms, these tunnels are facing some severe challenges. And, as we saw during Sandy, they were closed. During peak hours, a train enters those tunnels every 150 seconds. Arguably, they are already over-crowded. And many people who use those tunnels daily are struck with frustrations because of delays, because of mechanical problems, and the like. As you know, projects of this magnitude could take years to complete. And so, the clock is ticking if that 20 years is coming down.

And so, given this urgency, what can we do to ensure that, as we focus on critical immediate projects, what can we be doing to be sure that multi-year projects get the funding that they need, and get the funding that they need not to respond to a crisis but really what is more economically justifiable, the funding they need, to avert crisis before they happen?

Secretary Foxx. Thank you for the question, Senator. And it is a pleasure to be on this end of the table from you, as well.

Specifically on the Hudson Crossing, as you know, several years ago, the department committed \$3 billion to build a new modern rail tunnel but the effort was canceled. The GROW AMERICA Act would provide Amtrak with predictable dedicated funding to repair and replace its aging infrastructure just like these tunnel areas you're talking about. And Amtrak has already begun efforts to replace these tunnels and it's called the Gateway Tunnel Project

which could be leveraged with, again, predictable dedicated funding which our bill would provide.

On the larger issues, you're exactly right. We treat our infrastructure as if there's not a cost associated with poorly maintained infrastructure. But, in reality, there is. There's the cost of inflation; eventually you have to replace it. There's the cost of wear and tear on the vehicle side in every state I've gone to and I've seen evidence of the additional cost it costs consumers and vehicle users just to, buy tires and other things because they're riding over pot-holes.

And so, there's a cost to not acting. And, frankly, specifically when it comes to rail or highways when there's uncertainty, lack of predictable funding, lack of dedicated funding, it's impossible to plan——

Senator BOOKER. Sorry to interrupt you, Secretary. Your point is 100 percent clear.

If you could just touch on, I won't go through the longer part of the question but, as trucks seek to expand, we really have an issue with the impact on roads. There's this study that you all are engaged upon that it seems like you need more time to make sure that we're doing the right thing for road safety and a number of other very important measures. Can you just comment on that really, really briefly?

Secretary FOXX. Yes.

We are continuing to work through our study. We have another public meeting coming up this summer on that. I expect that the report will be issued to Congress by the November 15 deadline.

Senator BOOKER. All right. Thank you very much.

Secretary FOXX. Thank you.

Senator BOOKER. It's with great hesitancy that, while it's the first time I have the Chair of the Commerce Committee, that I look across the table at my friend and colleague, Senator Heller. It's with great hesitancy that I not only recognize you to speak next but I yield my power as Chairman.

**STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA**

Senator HELLER [presiding]. Are you going to leave?

Senator BOOKER. I'm going to leave to go vote, sir.

Senator HELLER. Because Senator Scott and I would like to bring up a couple bills.

[Laughter.]

Senator BOOKER. For the sake of my dear friend, Secretary Foxx, I might want to stay.

Senator HELLER. Well, thank you.

And, Mr. Secretary, thank you for taking the time.

Secretary FOXX. Thank you, Senator.

Senator HELLER. I'll be brief.

I wanted to bring up some NHTSA and GM, but I think we've played that hand quite a bit today. So I'll keep my comments brief for Senator Scott so we can both get down, the three of us, get down to the floor.

But, like you, I want you to know I feel it's imperative, what you do is very important.

Secretary FOXX. Thank you.

Senator HELLER. Infrastructure for the country, for the state of Nevada, it's critically important. And I want to talk about one issue that I believe is imperative and critically important for the state of Nevada.

According to the U.S. Census Bureau, between 2010 and 2030, they anticipate that the Mountain West, which Nevada is part of, will grow by 28.5 percent. Twenty-eight and a half percent; roughly 32 million people will be in that region. So the demand for both freight and personal vehicles are expected to soar. And I do not want a multi-year surface transportation bill to be signed into law without planning for the future transportation needs, of course, of Nevada.

So I wrote a letter to the Chairman of EPW and the Ranking Member and the necessity and need for Congressional designation of a road from Las Vegas through Northern Nevada. And our Governor is participating in this also; trying to determine where that route will be. But in the meantime, I'd love to have that designation.

And the reason it's important, and I'll be quick, the reason it'll be important, I'm going to get done with this, Senator Scott, is that Nevada is a net importer of freight. We probably bring in almost double of what we produce into the state of Nevada. And, as you know, it's a service industry. And so, that makes some sense. And, obviously, the ability to move freight would determine the world-class experience that we offer in the State of Nevada. And so, that's why designating a road to the north as part of I-11 is so important.

So, I guess my question to you, and then I'll be done—what we're trying to do is increase trade, create jobs, improve our economy. My question for you is: Will you support our endeavors as a delegation from Nevada to congressionally designate I-11 into northern Nevada?

Secretary FOXX. First of all, Senator, thank you very much for the question. And the types of challenges you just described in Nevada are challenges that we see all over the country.

Senator HELLER. I'm sure you do. I'm sure you do.

Secretary FOXX. And it is one of the reasons why having a robust solution on reauthorization and funding is so critical because even with a designation, without the resources, we're going to be in trouble.

Senator HELLER. You and I are on the same page.

Secretary FOXX. Yes, absolutely.

Now, having said that, I'd be happy to work with your delegation on this and I will ask our FHWA colleagues to interface with you directly on this.

Senator HELLER. Would you please?

Secretary FOXX. And we'll try to help you out.

Senator HELLER. Secretary, thank you very much.

Secretary FOXX. Thank you. Appreciate you.

Senator HELLER. Senator Scott.

**STATEMENT OF HON. TIM SCOTT,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator SCOTT [presiding]. Let me make my first order of business, as a new Chairman of this committee——

[Laughter.]

Senator SCOTT.—a point to vote for Senator Heller to be the permanent Chair of the Commerce Committee.

[Laughter.]

Senator SCOTT. Any opposition? I see none.

[Laughter.]

Senator SCOTT. Probably won't be funny when Chairman Rockefeller hears my comments here.

[Laughter.]

Senator SCOTT. Just a quick question for you. I had a couple but I think Senator Fischer talked about the potential for Interstate tolls which I think is very important with you being from North Carolina; two lanes going to three lanes on I-95 and the impact that would have. I'd love to, perhaps, submit that question for the record.

Secretary FOXX. Sure.

[The information requested follows:]

Answer. We are not suggesting that the Federal Government should direct State and local governments to impose tolls on their Interstate highways. Rather, we are proposing to offer tolling as a tool in the toolbox that states could consider—where appropriate—during the project planning and development process. And we are proposing to make the new toll authorities subject to Departmental approval.

As an example, the GROW AMERICA Act would allow any state the option of tolling a highway to pay for its reconstruction. Under GROW AMERICA, the existing Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP), with its limited number of slots, would be discontinued. In its place, any state that has identified a potential project to toll an Interstate highway to fund its reconstruction, and vetted it through the NEPA process, would be able to apply to USDOT for tolling authority. Before accepting proposals, we would first develop and publish criteria for tolling approvals, soliciting input from all interested parties and publishing final approval criteria in the Federal Register after thoroughly considering their comments.

Senator SCOTT. And then, get your response on that?

Another question that I'd love to get your perspective on has to do with the trust fund and the fact that we're spending, really, gas tax dollars, on transit systems that are not making any real contributions to the Highway Trust Fund. And while we have a challenge with building infrastructure, we have a challenge building the infrastructure that the 18.4 cents per gallon is dedicated to build. So I'd love to have that also for the record.

[The information requested follows:]

Answer. In 1982, Congress passed the Surface Transportation Assistance Act which directs a portion of Federal gasoline and diesel excise taxes to an account in the Highway Trust Fund specifically to help fund mass transit operations. Through the Mass Transit Account, buses, subways and other forms of mass transit have helped communities nationwide to expand or improve public transportation systems—thereby helping to reduce traffic congestion and improve air quality. Highways and mass transit systems are complementary, not competitive, solutions to America's transportation challenges and we need to increase investment in both.

Senator SCOTT. My question really has to do with just the regulatory environment that's been growing so quickly.

You think about the fact that in Fiscal Year 2013, almost 4,000 new rules were issued. Now we're seeing the cost of the regulatory environment is about 11 percent of the entire GDP of our country. If you're a small business owner like I used to be with 20 employees or fewer, the cost of the regulatory environment is about \$10,500 a year; if you have more than 500 employees, it's about \$7,800.

With GROW AMERICA, you have put forward lots of ideas for more regulations; and just to name two or three real quick and get your response on the cost benefit analysis on these regulations and other regulations to come. If you think about inspectors stopping passenger tour buses and doing inspections any time they want to while they're in route, I think that would have a major impact on the cost of doing business. If you think about being able to impound a new vehicle at a dealership for up to 72 hours, hopefully trying to figure out whether they're in compliance with the CAFE Standards that has another impact. And, if you think about an extension or expansion of the Federal hours-of-service regulations to railroads, I certainly know that would have an impact.

And my real question is simple. What is the cost benefit analysis suggesting and/or indicating to you? And, have we actually had a cost benefit analysis on these proposals, so to speak?

Secretary Foxx. Yes.

Well, thank you for the question, Senator. And we will submit responses to the questions for the record, as well.

[The information requested follows:]

Answer. Executive Order 13563, signed by President Obama in 2011, requires that any regulatory requirement adopted by an agency can be adopted "only upon a reasoned determination that its benefits justify its costs." While the statutory provisions proposed in GROW AMERICA have not yet been the subject of such benefit-cost analysis, they would all be subject to benefit-cost analysis before the regulations implementing them were issued.

Section 5401 of GROW AMERICA would amend the requirements for approval of State motor carrier safety plans. The proposed language would require that, "except in the case of an imminent hazard or obvious safety hazard," such plans must ensure "that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where adequate food, shelter, and sanitation facilities are available for passengers, and reasonable accommodations are available for passengers with disabilities." The proposed language only affects State inspectors, not Federal inspectors, and is quite restrictive about where inspections may take place, and does not allow inspectors to stop passenger tour buses any time they want to. Inspections can only take place where the needs of the passengers can be attended to. While we have not prepared a benefit-cost analysis of this provision, we believe that this provision will enhance safety without having a significant adverse effect on passengers. We believe that most passengers would be happy to have the assurance that the bus on which they are traveling is safe.

Under the National Highway Traffic Safety Administration's (NHTSA's) current regulations concerning Corporate Average Fuel Economy (CAFE) standards, the fuel economy standard varies depending on the "footprint" of the car—that is, the wheel-base of the car multiplied by its track width. It therefore becomes important to ensure that the footprint is accurately measured. Section 4108 of GROW AMERICA clarifies that NHTSA inspectors can examine automobiles at the manufacturer's or dealer's premises to confirm that the footprint stated in the manufacturer's certification of compliance is accurately measured. A mis-measurement of the car's footprint has the potential to increase the regulatory burden on the manufacturer as well as reduce it, so getting the measurement right has as much chance of reducing regulatory burdens as to increase them. We have not yet prepared a benefit-cost analysis of this provision, but we believe that both manufacturers and dealers have an interest in ensuring that the CAFE standards that apply to the cars they sell are accurately measured.

Finally, Federal hours-of-service regulations have applied to railroads since 1907. Section 9403 of GROW AMERICA would replace the existing rigid statutory requirements on railroad hours-of-service with a more flexible provision that would allow the Federal Railroad Administration (FRA) to draw upon the most recent scientific findings related to the effects of fatigue on safety in setting hours-of-service requirements. The 2008 Rail Safety Improvement Act gave FRA this regulatory discretion (which all other modal administrations at U.S. DOT already have) with respect to passenger railroads, but not with respect to freight railroads. FRA's rulemaking on hours of service for passenger railroads, issued in 2011, provided more flexibility for passenger railroads in setting hours of service requirements, so that regulatory burdens were reduced while safety was improved. Section 9403 of GROW AMERICA is intended to achieve exactly the same sort of win-win solution for freight railroads.

Senator SCOTT. Thank you.

Secretary FOXX. On the issues that you raised, as a data-driven agency, what's proposed in our bill is the product of our experience and the product of what we have learned in the different modes that you talked about. In the Federal Motor Carriers area, for instance, where you mentioned the stoppage of the motor coaches, what we found is that our enforcement capabilities are relatively narrow. And we closed 50 companies down last year that were bad actors. They weren't up to safety standards.

But our toolbox is relatively limited to catch the bad actors. And, unfortunately, the outcome, if we don't, is in some cases injury or death. And we've seen incidents just in the last year where these things have occurred. So our job and our goal is to ensure safety. And those regulations there are based on the data that we have. Now, I'm certainly happy to have our team reach out to you and to provide you with what we have on the justification for those?

Senator SCOTT. Yes.

Secretary FOXX. Happy to do that, sir.

Senator SCOTT. Thank you. We'll follow up.

Secretary FOXX. OK.

Senator SCOTT. Thanks a lot.

**STATEMENT OF HON. ROY BLUNT,
U.S. SENATOR FROM MISSOURI**

Senator BLUNT [presiding]. Mr. Secretary, I never expected that Senator Scott and I would be in charge of this committee but I like the—well, at least—not right now, but I like the feel of it. Thanks for staying and thanks for accommodating members having to come and go as they have. As a matter of fact, Senator Ayotte and I went to cast one of the two votes and then came back and we'll eventually catch the second half of that two vote series.

On positive train control, on March 6, when Mr. Szabo was here, the Federal Railroad Administrator, we talked about positive train control. And at the time, I asked him to consider treating those railroads that could be in compliance as test cases until everyone is in compliance. You know, where they could be up and operational and maybe seeing what the problems with the system are. But it would seem unfair to me that they would have all of the application that we'd eventually want that law to have when other railroads weren't even complying. In your reauthorization proposal, the FRA asked for the authority to extend the December 2015 deadline on a case-by-case basis.

So my question is, under this proposal, would the Federal Railroad Administration treat railroads in full compliance as a test

case so they wouldn't be competitively disadvantaged against other railroads who simply have failed to meet the deadline?

Secretary FOXX. I want to make sure that I understand the question, Senator. Is the question whether we would allow them to activate positive train control if they had the capability today versus a company that does not? Just want to make sure I understand the question.

Senator BLUNT. I think the question is, if they activate positive train control but others do not, would you hold them to all of the requirements that we would eventually hope everybody would have to meet or would they merely be a test case, able to each share that material?

I mean, many of these railroads even run on the same track for certain periods of time, though they may not share the, obviously, the same track all the time. Or I guess they'd all have, at least, access to positive train control. So I think you have a real inequity here if the railroads that had met the law have to be in full compliance while everybody else has an un-penalized waiver.

At the same time, we've seen what happened with the Affordable Care Act having a test case out there to see how many problems there are but not necessarily penalizing the people who are trying to comply for the problems they might be able to discover and share. It seems to me a more reasonable place to be.

Secretary FOXX. If it's okay, Senator, I'd like to submit for the record on that. And primarily because I do know that there are a handful of companies that have made significant investments in the positive train control technology. And what I'd like to get back to you on is the question that I think you're raising as to whether there's a burden on them in fully activating and adhering to our standards as articulated in the previous law that Congress has required. And I'd like to get back to you on that.

Senator BLUNT. Yes, I'd like you to look at that really carefully because, if we just simply waive the deadline for some of these railroads but we want the other railroads to be fully compliant with the law, that doesn't seem fair to me. I think the government, itself, has been complicit in making it hard to comply with tower sitings and other problems that you're fully aware of. I also think it would be helpful to have some of the railroads testing the system out and up and running.

But whatever the obligations or penalties are of somehow failing to be 95 percent in compliance on a given day, or something, I'd hate to see them penalized for that while we let other railroads take another couple of years.

So look at that and see if there is anything within the rule. And I believe when Mr. Szabo was here he seemed to fully appreciate the unfairness of what might happen there. So look at that and I'm more than glad to have a response for the record but I would like to have a response on that.

[The information requested follows:]

Answer. Let me respond to the concerns you've raised. Of course, DOT does not wish to penalize railroads for being more successful than others in implementing PTC systems, and the agency recognizes that there may be issues with PTC systems when they are first put into revenue service. In the GROW AMERICA Act, FRA requests authority for provisional certifications to allow railroads more time in revenue service to identify those issues. Additionally, FRA has proposed a rule that

would reduce the burdens of operating a train suffering a PTC system failure, and the final rule is currently under Executive Branch review.

Senator BLUNT. One other thing that you may want to do for the record or not: In the Compliance, Safety, and Accountability program, CSA program, meant to use crash and violation data to develop motor carrier vehicle safety scores, these scores would then be used by FMCSA to target resources for enforcement and by third parties to use as the basis for safety-based business decisions. There's a GAO report that came out in February that found that many of these scores, generally, don't correlate to actual future crash risk. And the GAO found serious limitations in this program's ability to assign fair safety ratings to motor carriers.

So the question is what changes is your department planning to make to address the GAO report?

Secretary FOXX. We'll submit for the record on that, Senator.

Senator BLUNT. All right.

Secretary FOXX. Thank you.

[The information requested follows:]

Answer. We strongly disagree that GAO has demonstrated FMCSA's methodology is not sufficiently reliable for its intended purpose, which is to prioritize motor carriers for interventions to ensure the most effective use of the Agency's resources. The CSA program does not assign safety ratings to motor carriers. The alternative methodology suggested in GAO's report would result in a prioritization tool that would only provide meaningful information about large carriers with little, if any, practical applications for assessing the safety performance of small and medium carriers that are involved in the majority of commercial motor vehicle related crashes. We acknowledge that more data and observations would improve the Safety Measurement System (SMS) from a statistical confidence interval perspective, which the Agency will continue to work towards. However, the relatively small percentage of the active interstate carriers that would be assessed using GAO's recommended methodology would create far greater oversight vulnerabilities than the current SMS.

While the Department does not agree with some conclusions of the GAO report, FMCSA continuously reviews and makes enhancements to its methodology for the selection of motor carriers for intervention. FMCSA launched SMS in December 2010 after a period of testing, evaluation, and unprecedented levels of public input. Since then, FMCSA has made a number of enhancements to improve the effectiveness of SMS in identifying motor carriers for interventions. These changes were based on analysis conducted by the Agency, in addition to recommendations provided by its stakeholders, including industry and safety advocates.

FMCSA's most recent analysis confirms the effectiveness of SMS as an intervention tool, finding that the group of carriers identified as high risk have a future crash rate twice the national average, and those carriers prioritized for a CSA intervention (for any carrier with a Behavior Analysis & Safety Improvement Category (BASIC) above the intervention threshold) have a 79 percent higher future crash rate than the group of carriers not identified for CSA interventions (*i.e.*, not above the intervention threshold). As a result, FMCSA continues to believe that SMS is an effective prioritization tool and is an improvement over the previous SafeStat system. SMS continues to evolve and mature as data, feedback, and other relevant information becomes available.

FMCSA will continue to build on the positive results from the use of SMS to prioritize carriers for interventions and make adjustments to hone the effectiveness of the system. The Agency will analyze GAO's recommendations as part of that process. FMCSA's plans for continuous improvement include analyzing approaches and aligning improvements to identify and prioritize carriers for CSA interventions within the following framework:

- Finding carriers with higher crash risk across the spectrum of carrier sizes with varying amounts of carrier safety data. This allows the CSA program to hold a large portion of the motor carrier industry accountable for poor safety management controls, rather than just focusing on those carriers regularly being inspected.

- Identifying carriers with the worst pattern of on-road violations and high crash risk. These carriers have the largest potential for improvement from CSA interventions.
- Identifying non-compliance patterns and intervening early to help carriers establish strong safety practices before crashes occur.
- Monitoring safety performance over time for carriers that entered the CSA intervention process. This allows FMCSA to quickly respond and prioritize enforcement resources on carriers that show trends of worsening safety performance rather than carriers that are improving.

FMCSA remains committed to considering future changes to SMS provided such changes improve the Agency's ability to identify unsafe motor carriers for intervention prioritization.

Senator BLUNT. Let me see if I can get one more quick one in before—we've somehow gotten in charge of this hearing.

[Laughter.]

Senator BLUNT. So I'm feeling good about this.

I think those are the two——

Senator AYOTTE. I appreciate that.

Senator BLUNT. Let me let Senator Ayotte ask her question. I may come back for one quick question when she's done.

Secretary FOXX. OK.

**STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Do I call you Chairman? This is great.

Secretary Foxx, it's great to welcome you here. Thank you.

Secretary FOXX. Thank you.

Senator AYOTTE. I know that one of the issues you're concerned about is the number of the bridges across the nation that are in desperate need of repair. And one of those bridges is actually the Sarah Mildred Long Bridge, which connects New Hampshire and Maine. So it is a bridge that really deals with Interstate Commerce as well as critical to both states in terms of the commerce and their seacoast areas.

So what's been happening is that this bridge is critical not only for automobile traffic, its freight, rail, and cargo vessels. Because there's a port right there so it kind of hits all modes of transportation. This bridge has been closed numerous times for major repairs over the last 5 years. So what it does is it disrupts the businesses and the residents in the area for both New Hampshire and Maine.

So the bridge, itself, has been rated as structurally deficient. It requires immediate replacement to preserve public safety and support the trade in the Northeast. So both the New Hampshire and Maine DOTs have worked together on this. So we're on the same page. We've been partnering as stakeholders with both states to identify a solution to repairing the bridge.

I'm sure you're aware that we applied for a TIGER Grant that both states support and all the delegations, on a bipartisan basis, are supporting. So, given the importance of this bridge to both states, I would be honored if you would consider coming to New Hampshire and perhaps joining both the New Hampshire and Maine delegations to see this bridge. So I know that not only myself but all my colleagues in both Maine and New Hampshire are concerned about getting this bridge repaired. So I would like to in-

vite you to New Hampshire and I hope you'd be willing to come join us.

And I will assure you that it's very, very pretty in the spring and summer. So I'm not asking you to come in the winter. We're past that. And we would love to host you in New Hampshire. So we'd like to invite you to do that.

Secretary FOXX. Senator, thank you for the invitation and consider it done. We will schedule that.

Senator AYOTTE. Fantastic. I'm so glad you'll come. And I know that my colleagues will, I'm sure, be glad to join us in that visit. So thank you, Mr. Secretary.

Secretary FOXX. Thank you.

Senator AYOTTE. I wanted to ask you also about the new truck driver hours-of-service rules that your department put into place in July 2013. So, I'm hearing a huge amount of feedback on this. I have legislation I filed on it, of these rules having an impact on productivity in a negative way. And drivers, in terms of the truck drivers themselves and thinking about the benefits versus some of the impacts of this, I think the rule itself has substantial problems.

I've not only heard from independent and small business truckers in New Hampshire but, also, I've been surprised at how many industries are impacted and have been coming to me and that obviously rely on delivery for whether it's food services, you know, almost—it has been staggering to me that the impact that this rule could have.

I know that, to justify these changes, your department really speculated that the rules themselves would make drivers healthier and live longer. What plans does your department have to measure and try to confirm whether these benefits that had been cited in the rule, that I haven't seen evidence of, will actually be realized versus the impact on our economy and our small truckers and our independent truckers and all the industries that they serve?

Secretary FOXX. Thank you for the question, Senator.

And the hours-of-service rule, like all of our efforts around safety, is driven by data. And I know that the impacts of some of our safety regulations sometimes provide limitations on folks' freedom of movement. But we've done a very deep amount of study on this and the agency is very convinced that this is the appropriate standard.

To your question about going forward and testing the effectiveness of the rule, I would like to submit to you on the record on that to make sure that we give you as complete a response as possible there.

Senator AYOTTE. I would also like to see the analysis that was done in terms of the impact on the economy to the people who will be impacted not only all of the independent truckers, the small businesses, but as well as the businesses that they serve who have all come to me and said that this rule is not workable.

So I hope that your department has taken that analysis. And so, if you could give me that information too, I'd really appreciate it.

Secretary FOXX. We'll get you the best information we can.

[The information requested follows:]

Answer. In our regulatory analysis, the Agency estimated that the changes to the hours of service rule would yield not only safety benefits in lives saved but also benefits to driver health. The FMCSA is exploring a number of approaches to more pre-

cisely assess the impact of the rulemaking on the long term health of commercial motor vehicle drivers and the operations of the motor carrier industry. In recent weeks we have engaged in several conversations regarding this issue with industry organizations, congressional staff, and safety advocates. As the Federal agency responsible for enforcing commercial motor vehicle safety on our Nation's roadways, we regularly examine the impact of our regulations on small businesses. And, as part of the President's Regulatory Retrospective Review, we continuously reach out to stakeholders to identify ways to advance our safety efforts at reduced costs to the regulated industry.

The benefits of the rule are not speculative. They are supported by the best available science on the relationship between increased sleep (for sleep-deprived groups, like truck drivers) and increased life expectancy. These benefits will of course be realized over a long period. FMCSA is considering a range of research projects to evaluate the effect of the 2011 final rule, including the two-night requirement that some argue puts an excessive number of trucks on the road early in the morning. The Agency will announce its research plans in due course and seek industry input and cooperation in refining them and carrying out the studies.

Senator AYOTTE. Thank you. Thank you so much.

And I do have a question that I'll just submit for the record, which is related to the issue of non-motorized users and the safety hazards for non-motorized users in establishing a separate performance standard for non-motorized transportation users. That's something I've been interested in as I've spent part of my life racing bicycles. So this is important. And I wanted to submit that issue to you for the record for you to comment.

Secretary FOXX. Absolutely.

[The information requested follows:]

Answer. Pedestrian and bicycle safety is one of my top priorities. All modes in DOT strongly support this priority and will continue to work collaboratively to do so. More information about DOT's bicycle and pedestrian work in this area is available at: <http://www.dot.gov/bicycles-pedestrians>.

In the Notice of Proposed Rulemaking (NPRM) for Safety Performance Measures (available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-03-11/pdf/2014-05152.pdf>), as required by MAP-21, we are proposing the establishment of one measure for each of the four areas mandated by MAP-21: number of fatalities, fatality rate, number of serious injuries, and serious injury rate. Our proposed measure is consistent with the focus of the Highway Safety Improvement Program, which is to reduce all fatalities and serious injuries—including those involving pedestrians and bicyclists.

States are already using and reporting a pedestrian fatality metric through NHTSA's Highway Safety Program. Just this spring, NHTSA reached a further agreement with the Governors Highway Safety Association (GHSA) to add to the requirement for states to develop a bicycle safety performance target. These will begin with FY 2015 highway safety grants. You can be assured that both NHTSA and FHWA are working cooperatively on safety performance measures to spur states to achieve the national goal of reducing fatalities and serious injuries for all users.

The Department supports a data-driven approach to addressing safety issues. As states update their Strategic Highway Safety Plans (SHSP)—the statewide-coordinated safety plan that provides a comprehensive framework for reducing all fatalities and serious injuries on all public roads—they bring pedestrian and bicyclist interests to the table and look at crash trends. An SHSP identifies a State's key safety needs and guides investment decisions toward strategies and countermeasures with the most potential to save lives and prevent injuries. The majority of states already include pedestrian and bicyclist safety in their SHSPs either as a priority emphasis area or a strategy.

As FHWA moves through the rulemaking process, FHWA will continue to consider all comments received. The Safety Performance Measures NPRM specifically asks for comment on how the Department could address non-motorized safety performance and how State and MPOs consider such data in their safety programs and in selecting investments.

Senator AYOTTE. Thank you.

Secretary FOXX. Thank you.

Senator BLUNT. Let me ask another question. It really is right along the line of the second question that Senator Ayotte asked.

On these rules on the surface transportation proposal that's out now, you suggest that the department be given the authority to track on-duty non-driving time of drivers and possibly require motor carriers to compensate employees for that on-duty non-driving time, which is different because of the rule; the rule that Senator Ayotte asked about.

Did you offer the driver on-duty non-driving reimbursement proposal because the new rule has had wage impact on drivers?

Secretary FOXX. I would like to submit on the record on that, Senator. I think the bottom-line here is that, in the motor coach—we're not talking about motor coaches here. We're talking about trucks?

Senator BLUNT. We're talking about motor carriers.

Secretary FOXX. Yes.

In that space, there are some realities that are different than there are for trucks and I just would like to submit for the record for you on that; if that's OK?

Senator BLUNT. I'll let you do that.

[The information requested follows:]

Answer. The Agency's recent proposal in the GROW AMERICA Act would permit the Agency to adopt, through rulemaking, a requirement that certain commercial motor vehicle drivers be compensated no less than the Federal minimum wage for non-driving, on-duty time. The proposal addresses the issue that drivers are experiencing detention times at shipping facilities that count against their hours to drive. In many cases, these drivers are not being paid for their waiting time. We often hear from drivers that this industry practice places pressure on drivers to drive beyond the hours of service limits as a matter of economic necessity. This concern is not limited to truck drivers; drivers of over-the-road motor coaches also experience on-duty, not driving periods when they are not compensated. We believe this business model has a negative impact on highway safety.

And I think that the similar question that Senator Ayotte asked was the assertion that these new rules, these new restart rules, would impact driver productivity but would also predict that drivers would be healthier and live longer. I'm going to submit a question for the record on that to ask what kind of data you have that indicates that drivers who are away from home in these breaks are somehow going to be healthier than drivers who, by driving under the old rules, actually got home. I don't find away from home, myself, is as healthy as being at home. And I doubt if drivers do too.

And then, the other would be well, what's been the wage impact?

[The information requested follows:]

Answer. The FMCSA has examined the fatigue impact of commercial motor carrier drivers taking two nights rest between 1 and 5 am during their 34-hour restart. Scientific studies have shown that this two night period provides more restorative sleep than a single night's rest. At this time we do not have specific information on the impact of home rest in contrast to rest obtained away from home.

Getting home has always been an issue for truck drivers. Before 2003, the industry argued that many drivers were kept waiting (and frustrated) at truck stops for days on end until their so-called 60-or 70-hour clocks could reset. The Agency adopted a 34-hour restart rule in 2003 in part to address that problem. Then complaints began to arise about drivers who were no more than 30 minutes or an hour from home, but had to shut down for a 34-hour restart. No matter what the limit on driving or on-duty time, however, there will always be some drivers just over the line who cannot get home without violating those limits.

As part of each of our rulemakings, the Department is required to consider the costs to the regulated industry and public for which transportation services are pro-

vided. This is carried out through a notice-and-comment rulemaking process in which all interested parties are encouraged to submit information and data on the potential economic impacts of proposed regulatory actions. The Regulatory Impact Analysis and benefit-cost analysis for the 2011 hours-of-service final rule addressed the economic impacts of the rule would have on trucking operations. The Agency did not receive information from shippers, receivers or other non-motor carrier entities that would have resulted in different values for the estimated costs of the rule. The Agency's economic estimates are available in the public rulemaking docket.

The Department has not attempted to estimate the wage impact of the 2011 final rule, but given industry predictions that driver shortages will soon reach 100,000, one would expect economic demand to increase driver wages, irrespective of any marginal effect of the hours-of-service rules.

Senator BLUNT. I understand Senator Nelson is coming back to ask a question.

Did you establish in earlier testimony, when I wasn't here, on the Lynchburg derailing? Was one of the tankers have, the tanker that met the more current standard, that punctured and—

Secretary FOXX. My understanding, and again, this is a matter that is under NTSB review, but my understanding is that it was a 1232 car.

Senator BLUNT. All right.

I think that's all I've got but Senator Nelson is coming back. If we could just take a moment here.

Secretary FOXX. OK.

Senator BLUNT. Anything else you want to talk about, Secretary? [Laughter.]

Secretary FOXX. I sing and I dance. I don't know.

Senator BLUNT. Exactly.

Well, it's a big job and it's an important job. You know, one of the things that we're looking at on this committee and the Finance Committee, both, are ways that we can figure out how to provide more funding sources for state and local governments. Senator Bennet and I have a bill that would take repatriated funds, stranded profits from overseas, let those be invested in an infrastructure fund to the tune of about \$50 billion which then allows \$750 billion or so of state and local infrastructure to happen. And then, Senator Warner and I have a bill that would be a more traditional funding vehicle but also for state and local gov called the BRIDGE Act.

I know we've got to figure out how to make this infrastructure work. And, one of the big challenges for you and for us, both, is to figure out how we can come up with a proposal we could all advance that would let us meet our infrastructure needs. I think there are great opportunities out there but you have to have the infrastructure it takes to meet those opportunities.

Secretary FOXX. Senator, you're exactly right. And I want to applaud you and many others who are trying to think through innovative ways to help us create more capacity in the system. The reality is that we are underinvesting in our infrastructure and we have been for some time. And that's one of the reasons why the GROW AMERICA Act is seeking to actually increase the investment in infrastructure.

Clearly there are many ways to get there. And we, of course, have said all along that we will propose our best thinking, our best solution, based on the feedback we've gotten from folks on the Hill. But, as consensus emerges on Capitol Hill around specific solutions, we've also said that we will keep an open ear and open mind

to ideas that emerge. And so, we welcome the work that you're doing and others are doing to try to get there.

Senator BLUNT. I think there'll unlikely be one solution here. There's lots of tools in the toolbox and not every one of them will be used by everybody but, if all of them could be used by somebody, then suddenly, you know, we find paths forward. And what I find, and I'm sure what you hear all the time, is everybody understands there's a huge infrastructure need. It's just that, generally, they want somebody else to pay for it. And, you know, states are struggling with this. We're struggling with our overall funding. I think you've mentioned already, you know, the traditional funding is about \$18 billion short of what we've been spending and even that string is running out and what do we do about that.

Secretary FOXX. It's a tough challenge. And compounding that is the fact that at the state and local level, as you point out and I have fairly recent experience with, the uncertainty is so profound that many of these communities and these states are slowing down projects. They are slowing down their planning process such that, even if the Federal Government all of a sudden figured out a way to fund this stuff over the long term, it would take a while in some cases for folks to ramp up because they slowed down their planning process.

Senator BLUNT. Yes.

And they can't even meet the—they feel like they can't so they're taking these off the books. I think that's true.

And the majority has now reasserted its control and Senator Nelson is here.

We did no damage while you were voting, Senator.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON [presiding]. Thank you, Senator. I appreciate it.

And Mr. Secretary, welcome. Sorry for the interruption. Two votes were held in the interim. So, thank you for being so patient.

Secretary FOXX. Thank you, Senator.

Senator NELSON. Yesterday, the Administration published the Third National Climate Assessment and it confirmed what a lot of us suspected: climate change is, indeed, real.

As a matter of fact, I took this committee to Miami Beach about a month ago and a NASA scientist testified not projections, not forecast, but measurements on sea-level rise: In the last 50 years, five to eight inches in Florida. And, of course, climate change and severe weather can have significant implications for our infrastructure.

There's a part of A1A Coastal Highway in South Florida that was severely eroded in Hurricane Sandy. And Hurricane Sandy was way off the coast. It ended up going up to the Northeast, as we know.

As the impact of climate change takes its toll on our infrastructure, what would you suggest that the Department of Transportation ought to be doing in improving standards and resiliency of the infrastructure that we are, then, having to rebuild?

Secretary FOXX. It's a great question, Senator. And you're exactly right. Climate change is real and it's a reality, unfortunately, that

we have to deal with in the infrastructure space. And we are mining our experiences all over the country.

I would also point out the Hurricane Sandy area where there are massive investments in infrastructure and we're learning how to build to a higher standard. Things like, for example, in subway systems where the wires were set on the floor. They're now being set on the ceiling and they're being encased in a much more resilient material that will survive water. And so, we're learning about all of this.

I would say that, from our standpoint, it means providing guidance to the states who are largely the project sponsors, in our transportation system, on best practices in building to a higher standard. It also means taking a look at, in some cases, height; in some cases, material; in some cases, design. And we're going to continue encouraging.

In our proposal, a lot of what we're doing with our proposal is actually encouraging best practices in the design and implementation of projects. And it's an unfortunate reality, but we do now have to build to a higher standard.

Senator NELSON. In the GROW AMERICA Act, the Administration proposed establishing a National High Performance Rail System, especially for Intercity Passenger Rail and considering that Amtrak ridership is at an all-time high and Americans are not driving much more than they were 10 years ago. But, in order to achieve our goal, we've got to have cooperation from the states.

I have a very unpleasant experience in my State of Florida, having worked with a lot of other very courageous people for a long period of time. And we were ready to put high-speed rail right down the middle of Interstate 4; from Tampa to Orlando. It would have been completed by next year and we would become the showcase for the entire country on high-speed rail; something that the United States is 30 and 40 years behind Europe and Asia in high-speed rail. They've even got a train now, I can't remember if it's China or Japan, I think it's both, that is upwards of 300 miles an hour.

So, despite the fact that there was \$2.4 billion on the table for Florida, it would have paid for 90 percent of the cost of getting it ready to go. And the Governor did not want to do it because of political ideological reasons even though he sat on his own Department of Transportation study that countered what he was using as the reason; which he was saying that the high-speed rail was not going to make any money and the State of Florida would have to pick up the deficit. His own Florida Department of Transportation study said it would make money in the very first year. And, by the tenth year, it was going to be making a considerable amount. And that is just Tampa to Orlando.

So \$2.4 billion that was ready to go and it went to other states and the project was killed. What are you experiencing with high-speed rail with other state governments so that we can further develop intercity rail in the U.S.?

Secretary FOXX. It's a vitally important question, Senator. And going from a macroperspective, we are going to have 100 million more people in this country by 2050. That's 100 million more people trying to move around. And the projections are the congestion

is going to increase unless we make substantial improvements to our surface transportation system. And those improvements must be multi-modal; can't just be one thing or another. It needs to be a mix.

We are finding that, despite some of the setbacks that were experienced early, that many states are now stepping into this. I was in Texas a couple of weeks ago and there's activity around trying to get a faster rail connection between Dallas and Houston, for example. I'm aware of efforts in the state of Florida now, to do some of that as well.

What is happening is folks are recognizing that our highway systems, as important as they are, as critical as they are, as population grows and needs increase, our travel times are going to increasingly become less predictable. And when you have strong robust rail systems, you can actually have predictable travel times. And, for folks that are taking their kids off to a vacation or whether they're traveling for work, time really is money. And I think our investments in rail will show themselves over the long-term.

Senator NELSON. We have a shortage in the Highway Trust Fund. And yesterday, I raised the issue in the Finance Committee with the Secretary of Transportation in the Commonwealth of Virginia. And I asked about their change of the law back in a previous administration from a gas tax, a state gas tax, to a sales tax. Tell me what you think about that.

Secretary FOXX. There are a lot of different alternatives out there. What Virginia did has obviously been ground shifting in Virginia. There are states that are taxing oil on the barrel. There are a lot of alternatives out there that have been tried and some are new, as is the case in Virginia.

What I would say, Senator, is that this is ultimately, in some respects, a political question. The math, itself, is very clear. We're going to fall short in the Highway Trust Fund—\$63 billion over the next four years. It goes up as you go on with time.

What's also clear is that the gas tax, the current gas tax which is not indexed, hasn't been raised since 1993, a gas tax has a downward facing curve. And that's a result of more efficient vehicles and lots of other issues. So wherever you set the level with a gas tax, the curve is still going to be going down. So there's a cliff out there somewhere.

We recognize these realities and we've put forward our idea, which is a 4-year, \$302 billion bill, funded with pro-growth business tax reform. But, as I've said earlier, if there are other ideas that emerge be it the idea that Virginia has raised, be it more conventional sources, we will listen to Congress and try to play a constructive role in getting us away from where we are right now, which is looking insolvency right in the face.

Senator NELSON. The Panama Canal is expanding and may be able to accept the larger ships by 2016. So it's going to cause the huge mega freighters to be able to come straight from Asia to the East Coast of the United States instead of having to unload onto rail or truck on the West Coast.

Do you think that we're getting ready, from a transportation infrastructure, are we getting ready to be able to accept all of this new cargo capacity?

Secretary FOXX. I think the reviews currently are mixed. Obviously, our West Coast ports are in really good shape; their depths are good; they can receive these Post-Panamax vessels just fine. On the East Coast, we only have two ports that are ready for Post-Panamax vessels. And, at the same time, there are countries in the Caribbean, in Europe, that are setting their ports up for success. And if we're competing against ports that are ready for the depths of these new vessels, we're going to lose opportunities. There's no question about it.

And so, I know that there is ongoing work on the water bill, a very important piece of legislation. But, in addition to that, from a surface transportation standpoint, not only do we need to worry about the depths, we also need to worry about the first and last mile challenges at these ports; the ability to connect highway systems, rail systems, directly to the ports so that we can have efficient movement of freight. And that is another area where we are challenged as a nation, and one of the reasons why we must have not only a stable Highway Trust Fund but increased investment in our infrastructure.

Senator NELSON. The port of Miami has been ahead of the curve. And they've been able to go ahead and get the infrastructure both with a tunnel as well as the rail connections that are just about both in place. Rail is already in place and the tunnel will open this fall. And the depths, by the time the big ships come, the depths in Miami will be dredged down to 50 feet.

So they should be able to handle it but others, for example, Jacksonville, it will be upwards of 2019 by the time upriver is dredged to sufficient depths. And likewise, other ports as well. And there are many others that, for example, Port Everglades at Fort Lauderdale, wants to be able to handle the Panamax ships. Tampa is another one.

But you're right. It's not just getting the ship up to the dock. Then it's unloading all of that extra container cargo and being able to distribute it in an efficient manner.

Final question. You've got a fascinating job because in your bailiwick is also aviation. And, lo and behold, in aviation now, in the FAA, is now the FAA role in commercial spaceflight. My observation is that it is proceeding quite nicely. It's not fast enough for carrying humans, but those processes are underway in now taking commercial rockets that have been quite successful; putting in all the redundancies and escape systems that make it safe for humans.

And although it looks like we're on a schedule for 2016 for that to happen, it can't happen fast enough for me because our only ride now to the International Space Station, which is longer than a football field with six astronauts and cosmonauts constantly onboard, our only ride is on the Russian's Soyuz rocket.

And, although I do not think that there will be any disruption because of the considerable cooperation between the Russian Space Program and the American one, one that goes back to the middle of the Cold War in the Soviet Union, by the way, when we have Apollo-Soyuz. Nevertheless, you never can quite predict what Mr. Putin is going to do. I don't think he will do anything drastic because the Russians can't operate the space station by themselves.

Their commands, many of their commands, have to go through Houston. Their electricity in the Russian part of the space station, their electricity, comes from American systems. So that along with the very strong desire of the Russian Space Program to cooperate with the Americans, I think, we'll keep it that way. But you have to worry about it when you see the escapades of Mr. Putin at this point.

So I just wanted to share that with you. That's not on your daily diet but it is clearly something that we'd have to face as we face issues of transportation these days.

Secretary FOXX. Absolutely.

Senator NELSON. Does the staff have any questions?

[Laughter.]

Senator NELSON. OK.

Well, Mr. Secretary, thank you for a very elucidating and illuminating hearing and the meeting is adjourned.

Secretary FOXX. Thank you, Senator.

[Whereupon, at 4:43 p.m., the hearing was adjourned.]

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV
TO HON. ANTHONY R. FOXX

Question 1. This country is desperately lagging behind in infrastructure investment. With funding hard to come by, and what funding is available primarily going through stove-piped modal administrations except for the limited funds in the TIGER program, we have to think about how we can get the biggest bang for our investments across modes. Given that the lion's share of infrastructure funding is channeled through administrative siloes, how can we optimize strategic investments in multimodal projects to facilitate efficient freight movement?

Answer. To optimize strategic investments, the Department must first identify and prioritize the multimodal projects that will facilitate efficient freight movement. The designation of the National Freight Network is the first step to identifying the corridors and connectors that are most important to the movement of freight. However, it is necessary that the National Freight Network is a multimodal designation, and not one that is solely focused on highways and intermodal connections to highways.

Another way to optimize strategic investments is to utilize data to inform investment decisions. The Department is focused on developing better data and forecasting tools so that these are available at the federal, state, and local level. Wider use of benefit-cost analysis for projects can help to prioritize investments that provide the largest benefits relative to the cost. States are currently required to develop risk-based asset management plans for their highway systems. Encouraging states to develop asset management plans for their entire freight transportation systems would help in planning future investments.

With limited Federal funding available, project financing and public private partnerships are an increasingly important tool for delivering major projects. The Department maintains several programs which provide project finance assistance to State, local, and private project sponsors, reducing project costs and incentivizing greater investment. The Transportation Infrastructure Financing and Innovation Act program (TIFIA) provides long-term, flexible financing to highway and transit projects with dedicated revenue sources, which can make public-private partnerships (P3s) an attractive option. As of June 1, 2014, TIFIA loans have supported 45 projects with more than \$17 billion in credit assistance, contributing to nearly \$64 billion in infrastructure investment. TIFIA has supported critical freight projects such as the Port of Miami Tunnel and Replacement of the Gerald Desmond Bridge. Other projects such as the Surface Transportation Private Activity Bond program (PABs) and the Railroad Rehabilitation and Improvement Financing (RRIF) have incentivized greater private sector investment in freight infrastructure. Moreover, RRIF loans allow financing of intermodal projects.

Question 2. Would it make sense to move beyond the current formulaic funding programs toward a multi-modal, strategic model?

Answer. There are certainly limitations to the formula funding model. The current formulaic funding makes it difficult to fund projects without a highway-centric focus. Additionally, the formula funds must be divided to fund both transit and freight based projects. Finally, because individual states determine where the formula funding is spent, there is a possibility that national or regional freight projects of significance are overlooked.

In the GROW AMERICA Act, the Department proposes to create a Multimodal Freight Investment Program that would include an incentive grant program and a discretionary grant program. The discretionary program would award grants to the projects that would have the greatest impact on the safety, efficiency, and state of good repair of the freight transportation system. The incentive grant program would reward states that have engaged multimodal stakeholders in a comprehensive freight planning process. The most important features of these programs are that they are multimodal and dedicated to freight investment. The Multimodal Freight Investment Program would help fund major national freight projects and allow the formula funds to target important state priorities.

Question 3. The Congressional Budget Office (CBO) estimates that the Highway Trust Fund, the main source of funding for highway and transit programs, will run out of cash to pay for day-to-day operations before MAP-21 expires at the end of the fiscal year—likely sometime over the summer. DOT recently came out and gave a more concrete date, saying the Highway Trust Fund will encounter a cash shortfall by August 29, 2014. As a result, construction projects around the country could slow or come to a complete stop during the peak of construction season. How much additional funding will the Highway Trust Fund need to get through the remainder of the fiscal year?

Answer. Based on our most recent data, the Highway Trust Fund would need an additional \$5 billion before the end of FY 2014 and approximately \$9 billion to get through the current calendar year.

Question 4. Will uncertainty leading up to HTF insolvency set back construction projects around the country? Are we seeing that occur already?

Answer. The impending Highway Trust Fund cash shortfall will have an impact on construction projects in the U.S. Some states have indicated they plan to slow down or put construction projects on hold due to uncertainty about Federal highway funding. Several other states have publicly announced that they are evaluating the situation and considering various options, but have not yet announced that they are delaying/suspending projects. I would note here that ramp-up and ramp-down costs for construction projects can increase total project costs and project completion times significantly.

States that have already taken action:

- Arkansas—issued an Information Release indicating that they are suspending some highway construction projects due to the impending HTF shortfall.

- Georgia—has announced they will be suspending its listing of highway construction projects beginning in July.
- Ohio—has decided to delay their Statewide Transportation Improvement Plan (STIP) by one year.
- Rhode Island—has halted advertising of all new, non-emergency highway projects.
- Tennessee—has announced the delay of certain construction projects pending a fix to the HTF shortfall.
- Vermont—has announced that they will delay awarding projects this summer until the HTF shortfall is resolved.

Question 5. Last week, the Administration introduced their 4-year, \$302 billion surface transportation bill. This proposal includes substantial funding for passenger and freight rail programs, freight and goods movement, and other general safety provisions. As we all know, increases in funding at this time are a difficult sell; however, we are confronted with an outdated, overburdened surface transportation system that is in need of serious repair. What all is on the table to fund the Administration's surface transportation proposal?

Answer. The Administration proposes to fund the GROW AMERICA Act through a pro-growth, business tax reform, without adding to the deficit. The President's Budget outlined a proposal to dedicate \$150 billion in one-time transition revenue from pro-growth business tax reform to address the funding crisis facing surface transportation programs and increase infrastructure investment. This amount is sufficient to not only fill the current funding gap in the Highway Trust Fund, but increase surface transportation investment over current authorized levels by nearly \$90 billion over the next four years. When taking into account existing funding for surface transportation, this plan will result in a total of \$302 billion being invested over four years putting people back to work modernizing our transportation infrastructure. The Administration believes that a comprehensive approach to reforming our business taxes can help create jobs and spur investment, while ensuring a fairer and more equitable tax system that eliminates current loopholes that reward companies for moving profits overseas and allow them to avoid paying their fair share. The Administration is putting forward this pro-growth financing plan to encourage bipartisan efforts to support a visionary infrastructure plan, but is open to all ideas for how to achieve this important objective, and will work closely with Members of Congress of both parties on a solution that will invest in more job creating transportation projects.

Question 6. Fuel taxes to support the HTF have not been raised in over 20 years. Other funding proposals, such as vehicle miles traveled (VMT), while they may have some merit, cannot be stood up overnight. Given these constraints, what do you see as the most fair and consumer-friendly way to raise revenue in the short-term?

Answer. The GROW AMERICA proposal, as we have articulated it, would accomplish the funding needs in the short term. We think it is the right way to go particularly given the urgency of the moment. Our ears and minds are open to what emerges from the Hill however. We would like to be in the discussions at a table with you.

Question 7. Last year, Americans took 10.7 billion trips on public transportation, the highest annual transit ridership in 57 years. Amtrak ridership continues to be at record levels, and since 1997 has grown faster than any other major travel mode in the U.S. Recent studies have also found that Americans drive no more miles than they did in 2004, and that individuals age 16 to 24 drive 23 percent fewer miles than they did a decade ago. I point out these statistics to show that transportation trends in America are changing. Is the Department of Transportation noticing these same trends, and if so, what does this mean for the future of transportation in this country, specifically transportation funding?

Answer. The Department's data on travel patterns reveal similar trends and suggest that these trends will continue for the foreseeable future. These trends first became apparent beginning with the "great recession" in late 2007—early 2008, but the general trajectory of these travel patterns has not changed despite the improving economy. This suggests that we will continue to experience increased public transportation and intercity passenger rail ridership, while vehicle miles traveled (VMT) decreases.

There are many factors that are causing this long-term shift, but the most prevalent are changing demographics and changing lifestyles. There is ongoing generational shift in lifestyle preferences not only here in the United States, but around the world. A significant portion of Generation X and Y, unlike the Baby Boomers, and generations before them, are choosing to live in urban areas, includ-

ing in densely populated urban cores where the need for driving is significantly lower and the availability of quality transit service and other alternatives is higher. Some choose to do so for economic reasons and some for social reasons. We cannot say whether their residential location and travel patterns will continue to differ from the older generation as the economy improves and the younger generation begins to have children, but we need to be adaptable to whichever long term patterns emerge.

Though these are positive trends, they ironically pose a threat to the future of our current system for surface transportation funding which relies predominantly on Federal fuel tax revenues. Even if we start to experience an increase in VMT, motor fuel tax revenue will continue to be affected by the increased number of fuel-efficient vehicles on the market. While fuel-efficient vehicles have been beneficial to consumers and our environment, they contribute to a reduction in the Highway Trust Fund's resources.

Current FHWA data indicate that the Highway Account of the Highway Trust Fund will likely face another shortfall before the end of FY 2014. While the timing of the forecast is subject to change, there is little doubt that another funding crisis will soon be upon us. It is imperative that we recognize the long-term trends facing the Nation and their ramification on the future of the surface transportation funding. Finding a sustainable solution that acknowledges these factors should be our collective goal. After all, maintaining and improving our highway and transit infrastructure is vital to our economy and our way of life.

Question 8. Most transportation programs are broken down into modal silos and are not accountable to any unifying strategic vision or national purpose. A major reason for this is the lack of a cohesive national transportation plan that examines actual travel trends and future needs to determine how the modes inter-relate and what investments are necessary. What can be done to better integrate our Nation's transportation programs and coordinate investments across modes?

Answer. The Department recognizes that there is a great need for national transportation plans that unify and coordinate national transportation programs so that investment can be directed to where it is needed most. There are two separate efforts currently underway to address national transportation system planning. The Department is beginning to develop a 30-year National Transportation Agenda that will consider current and future travel trends, as well as how each mode fits into the future of the national transportation system. The intent of the 30-year National Transportation Agenda is to spur future discussion of the long-range transportation needs of the country and identify areas where future investment is needed.

Additionally, MAP-21 directed the Department to draft a National Freight Strategic Plan and a Freight Transportation Conditions and Performance Report. The Department is currently working towards a final draft of the Freight Conditions and Performance Report that is expected to be completed later this year. Preliminary work on the National Freight Strategic Plan has already begun and will be completed in 2015. The National Freight Strategic Plan will emphasize the multimodal interactions that are necessary for the efficient movement of freight. One goal will be to identify the chokepoints and bottlenecks, particularly at intermodal connectors, where investment is necessary.

The Department believes that both of these efforts will provide a unifying strategic vision to coordinate and prioritize investments going forward. Facilitating greater cooperation between the different modes is an important goal for the Department, particularly in making investment decisions. The Department is striving towards this goal and is continuing to realize improvements.

Question 9. Congress has authorized the DOT's Disadvantaged Business Enterprises (DBE) program in every surface transportation bill since 1982. The purpose of these provisions was to address past and current discrimination against minority and women-owned small businesses, and to ensure that they are provided equal opportunity to compete for DOT-assisted transportation projects, such as the construction of highways. Does race or gender discrimination continue to impact transportation programs? Please provide any additional information and evidence DOT has compiled on this topic.

Answer. Over the past several decades, the Department of Transportation and other Federal agencies have submitted similar disparity and other studies to Congress on which Congress has relied in part to find that there is a compelling need to authorize the Department of Transportation to create and to maintain its Disadvantaged Business Enterprise (DBE) Program. Unfortunately, as demonstrated by numerous more recent studies and data, including those retained in Committee files, although significant progress has occurred due to the enactment of the DBE

program, discrimination remains a significant barrier for minority- and women-owned businesses seeking to do business in highway and transit-related markets.

Question 10. DOT is currently conducting a comprehensive truck size and weight study as required by MAP-21. Recently, the National Academy of Sciences (NAS) Peer Review Committee issued a report highlighting what they believed to be methodological flaws in the study. However, the Federal Highway Administration (FHWA) has stated that they do not intend to make any changes to the truck size and weight study methodology. Does DOT plan to make any changes to the truck size and weight study to address the concerns identified in the NAS report?

Answer. The NAS Peer Review Panel recommended a consistent organization of the elements within each of five desk scans, a clear linkage between material in each desk scan and its corresponding project plan, and a synthesis of methods and results from prior studies to the results of this Study. The Department agrees with these recommendations and is incorporating these changes in the final desk scans and related documents.

Question 11. In their report, NAS also noted that there were “significant weaknesses” in the data collections and analytical methods FHWA was using. Do you agree with that assessment? Please provide additional details to support your position.

Answer. Although in none of the five major analysis areas did the NAS Peer Review Committee identify modeling approaches or data sources omitted from the desk scans that would be clearly superior to those selected by the USDOT study team, USDOT recognizes that in some study areas, despite using the most appropriate models and data available, there are some data limitations and methodological challenges to undertaking a robust and comprehensive analysis. The Department intends to describe these limitations and challenges in the Study.

Question 12. The NAS report believes that the study is relying on deficient methods because there is not a sufficient amount of time to develop appropriate methods given the congressional timeline. NAS believes that these deficient methodologies can lead to inaccurate results. Given the public policy and safety ramifications that this study will have, do you believe that the study can be successfully and accurately completed according to the congressionally mandated timeline? What happens if you don’t meet the deadline?

Answer. We are focused on getting this Study right. The Department is committed to an objective, data-driven, approach that uses appropriate methods and is responsive to the requirements set forth in MAP-21. The Department takes congressional deadlines seriously, but if it takes longer than the Congressional deadline to produce a satisfactory Study, then we will inform Congress and take that additional time.

Question 13. MAP-21 included mandatory requirements for the issuance of four important occupant protection regulations. DOT issued the seat belt rule last year. However, final rules for improving motorcoach roof strength, anti-ejection protection and rollover prevention technology are required to be issued by October 1, 2014. To date, there have been not been any NPRMs issued for these safety standards. Will DOT meet the October 1, 2014 statutory deadlines for these safety standards? If not, when do you believe these rules will be issued?

Answer. NHTSA is working diligently to implement the various motor vehicle and highway safety improvements contained in MAP-21, as well as other rulemaking, enforcement, vehicle research, and highway safety activities that reduce highway injuries and deaths. For example, in 2013, NHTSA issued a rule requiring seatbelts on motorcoaches. The agency already issued the NPRM for motorcoach rollover crash avoidance, which is part of “Electronic Stability Control Systems for Heavy Vehicles,” and plans to issue the final rule this year. The agency plans to issue the NPRM for motorcoach roof strength, also known as “Motorcoach Rollover Structural Integrity,” this year, and will develop a final rule schedule after receiving and analyzing comments on the proposal. We have not yet determined a schedule for the NPRM for motorcoach anti-ejection safety measures.

Question 14. The Administration’s GROW AMERICA Act recently submitted to Congress proposes to modify the requirement for safety reviews of new entrant motor carriers by making the reviews discretionary rather than mandatory, which current law requires. DOT’s report language states that the new entrant safety reviews have been ineffective and that new entrant knowledge testing, which has not yet been proposed, will address this shortcoming. What analysis has DOT performed of the new entrant review methodology to determine the reason that safety reviews are ineffective?

Answer. FMCSA believes that safety audits conducted under the New Entrant Safety Assurance Program, in some cases, are an effective means to hold newly es-

tablished motor carriers accountable for having appropriate safety management controls. This is particularly true in the case of companies run by individuals with little experience in the industry and little exposure to Federal safety regulations or industry best practices. That is not always the case, however.

The Department based its proposal for increased flexibility in conducting safety audits on a program evaluation of the New Entrant Safety Assurance Program (NESAP) that was initiated in FY 2012. The preliminary results of the study found that new entrant carriers are indeed overrepresented in crashes. Overall, new entrant carriers have a crash rate that ranges from 22.3 percent to 40.2 percent higher than non-new entrant carriers during the period 2004 to 2009; and 28.8 percent higher than non-new entrant carriers in the first full year after the New Entrant Safety Assurance Process Final Rule published December 16, 2008, with an effective date of December 16, 2010. In addition, the study found sufficient evidence to conclude that new entrant carriers violate safety rules more frequently than existing carriers. Despite this data indicating the need for new carriers to receive an intervention, the pre-safety audit and post-safety audit analysis indicated that new entrant carrier crash rates increased counter-intuitively after the safety audit by about 10 percent during the 2003–2009 period. While the crash results were better during the period of 2010 through 2012, the new entrant crash rate performance after conducting the safety audit failed to demonstrate any measureable improvement. There is evidence that carrier compliance with regulations improves modestly immediately following a safety audit, however, there is no evidence to support the assumption that carrier crash performance improves following a safety audit.

Based on the preliminary results of the NESAP evaluation it is recommended that FMCSA redefine new entrant carriers as small carriers with fewer than five power units with limited or no experience, allowing FMCSA to focus resources on those carriers posing a higher safety risk. FMCSA is tasked by Congress with overseeing a large regulated population and with managing scarce government resources. The Agency has developed considerable expertise with a wide range of safety enhancing enforcement tools and programs, from comprehensive reviews to civil penalties to warning letters to outreach and education. The Agency has examined the effectiveness of many of these tools, and in many cases the new entrant safety audits are less valuable than other interventions.

Question 15. More than twenty years ago, Congress directed DOT to develop and issue training requirements for entry-level commercial vehicle operators. In MAP-21, Congress again directed DOT to issue a final rule for training entry-level commercial vehicle operators by September 2013. However, DOT withdrew their proposed rule last year. When will DOT issue a final rule requiring minimum training standards for entry-level commercial motor vehicle drivers?

Answer. While the entry-level driver training rulemaking is a priority for FMCSA, the Agency cannot now precisely project the completion date of a final rule as further explained below. The Agency anticipates awarding a contract within the next month to engage the services of a convener to assess the feasibility of conducting a negotiated rulemaking under the Negotiated Rulemaking Act (NRA) (Pub. L. No. 101-646, 5 U.S.C. secs. 581–590) to implement this important MAP-21 provision. This follows a series of public listening sessions that were held in 2013 and the June 2013 letter report provided by the Agency's Motor Carrier Safety Advisory Committee. If the convener suggests a negotiated rulemaking is feasible and FMCSA utilizes this process, however, the Agency is still required to provide a notice soliciting committee membership and create a charter under the Federal Advisory Committee Act before the negotiations could begin (NRA, 5 U.S.C. sec. 584). While it is difficult to predict precisely how long negotiations would take, past experiences suggest it is normally less than a year. The consensus-based NPRM would then be published for notice and comment.

Based on MAP-21, the Agency's current rulemaking must: (1) address the knowledge and skills needed for safe operation of a CMV, (2) address the specific training needs of those seeking hazardous materials and passenger endorsements, (3) create a means of certifying that an applicant for a CDL meets Federal requirements, and (4) require training providers to demonstrate that their training meets uniform Federal standards. The 2007 NPRM did not address endorsement-related training or the entry-level training of new intrastate CDL applicants that is now mandated by MAP-21; these additional statutory provisions would be addressed in the current rulemaking.

After reviewing the MAP-21 requirements, comments to the 2007 NPRM, participants' statements during the Agency's public listening sessions held in 2013, and the Motor Carrier Safety Advisory Committee's June 2013 letter report, FMCSA determined that it would be inappropriate to continue with the rulemaking initiated in 2007. The Agency concluded that a new rulemaking would provide the most effective

tive starting point for implementing the MAP-21 requirements. A new rulemaking would provide the Agency and all interested parties the opportunity to develop a proposal that focuses on the MAP-21 mandate and makes the best use of the wealth of information provided by stakeholders since publication of the 2007 NPRM.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. EDWARD MARKEY TO
HON. ANTHONY R. FOXX

Question 1. In 2000, the TREAD Act was enacted in response to the Ford/Firestone rollover issue. That bill created the Early Warning Reporting (EWR) System. At the time, after some expressed concern that the industry would continue to seek to withhold critical information from the public, I engaged in an October 10, 2000 Floor colloquy with then-Energy and Commerce Chairman Billy Tauzin in which I obtained Chairman Tauzin's affirmation that the bill was not intended to protect information from disclosure that could be disclosed under the law. Although the EWR proposed rule was consistent with the stated intent of Congress, the final rule was not. The problem with the current rule can be described as follows: If I make a complaint to NHTSA's consumer database that includes details about a serious automobile safety concern, that information is made publicly available. If I instead make the identical complaint to an automaker, the automaker is allowed under NHTSA's rules to classify the entire complaint as 'confidential business information,' counter to the clear intent of Congress. I also raised this concern in 2010 hearings with then-Secretary LaHood and then-NHTSA Administrator Strickland. Will you commit to rewriting this regulation, consistent with the language I included in S. 2151, in order to ensure that only the information that truly could be withheld from public release under the Freedom of Information Act can be withheld from disclosure under EWR reporting? If not, why not?

Answer. This is a complex issue. I committed to provide comments to the Committee on S. 2151, a bill introduced by Senators Markey and Blumenthal to make additional EWR information and certain fatality information publicly available and to improve the public's access to information on the agency's vehicle safety related databases. I will provide my comments to the Committee under separate cover.

Question 2. S. 2151 also includes a provision directing automakers to automatically submit the accident report or other document that first alerted them to a fatality involving their vehicle or equipment to NHTSA's Early Warning Reporting database. NHTSA is then required to automatically make those documents public unless they are exempted from public disclosure under the Freedom Of Information Act (FOIA). Presently, these documents are only provided to NHTSA if the agency requests them, and they are not made public unless they are requested under FOIA. On May 7, I released a document that consists of GM's response to just such a request by NHTSA. This document—which did not contain any proprietary information—shows that both GM and NHTSA knew that the contractor the agency used to investigate a fatal Wisconsin accident reported the accident was linked to the fact that the airbags had not deployed. GM also sent NHTSA a February 2007 collision analysis and reconstruction report done by the Wisconsin State Patrol Academy that highlighted the ignition switch defect as preventing the airbags from deploying. The report also references other reports of similar problems that the Wisconsin investigators uncovered. Had this document been made automatically available to NHTSA, the public and independent safety experts, it could have provided an actual "early warning" and potentially avoided other accidents, injuries and deaths. Does the Department support the provision and subsequent publication in the EWR database of documents such as the accident report or other document that first alerted automakers to a fatality involving their vehicle or equipment to NHTSA? If not, why not?

Answer. This is a complex issue. I committed to provide comments to the Committee on S. 2151, a bill introduced by Senators Markey and Blumenthal to make additional EWR information and certain fatality information publicly available and to improve the public's access to information on the agency's vehicle safety related databases. I will provide my comments to the Committee under separate cover.

Question 3. Does the Department believe that NHTSA should be required to consider information contained in the EWR database when it is investigating potential safety defects and when it is evaluating citizen petitions for automobile safety standards or enforcement actions? If not, why not?

Answer. When investigating potential safety defects including petitions, NHTSA relies on all the information it collects using the authority delegated by Congress. This information includes, but is not limited to, EWR reports as well as consumer complaint data, field reports, manufacturer communications including technical

service bulletins, SCI crash reports, precedent in prior investigations and peer vehicle data. Given that EWR reports are already integrated in NHTSA standard defect evaluation and investigation process, the Department does not see a need to statutorily require NHTSA to consider EWR information.

Question 4. Tire Identification Numbers (TINs) are 12-symbol alphanumeric codes required by NHTSA and are intended to assist consumers, manufacturers, vendors and service providers when tires are recalled. The agency created the TIN system in 1970 to function as a tire identifier in the event of a recall. According to recent press reports, there is no database that is searchable by TINs on NHTSA's database and often no way for consumers, vendors or manufacturers to quickly and easily access and read the TINs on tires themselves. This has led to accidents, injuries and deaths as people drove in vehicles with recalled tires that later failed. Would the Department undertake a) the creation of a searchable TIN database that would allow people to quickly search by TIN, as well as by make and model, on recalled tires to determine whether particular tires were part of a recall b) a rulemaking to require TINs to be easily accessible and machine-readable so that consumers, vendors or service providers can quickly determine their recall status and c) a rulemaking to require tire vendors to register tire owner information so that providing notice in the event of a tire recall is facilitated? If not, why not?

Answer. The Department is committed to exploring ways to improve tire registrations and tire recall completion rates. NHTSA is currently learning more about how dealers are implementing the tire registration process. NHTSA also is conducting outreach to dealers to educate them of their obligation to provide registration cards or electronically register the tires at the point of sale. NHTSA intends to work with industry to determine the best way to increase registration rates. Based upon the result of these efforts, the Department will decide whether a rulemaking effort is necessary.

Regarding recall completion rates, the Department believes that a TIN lookup that furnishes recall applicability and a calculated tire age could be beneficial to consumers. Such a database would improve customer understanding of what tires are covered by recalls as well as the age of the tire. A TIN, however, is different from a vehicle identification number or VIN. While a VIN is a unique identifier for every vehicle, a TIN only identifies a batch of tires made during a specific week at a specific plant. The TIN is not a unique identifier, but it could still be used to determine whether a tire is part of a recalled batch as well as to determine the age of the tire.

However, we believe that tire manufacturers are best positioned to compile and maintain the data online, similar to our requirement that automakers and motorcycle manufacturers provide consumers with a free online tool that will enable them to search recall information by VIN starting this summer. Were NHTSA required to develop and maintain such data, properly deploying such a database would require significant information collection from the public, industry and stakeholders to assess the best method and to avoid unintended consequences. In addition, standing up and maintaining the related information technology infrastructure and data processing procedures would require significant resources. And before committing to a rulemaking mandating the TIN to be easily accessible and machine readable, we would need to consider the safety need, technical feasibility and anticipated costs and benefits.

Question 5. What information does the Department, whether through the Federal Railroad Administration or some other entity, collect regarding toxic inhalation hazard (TIH) or other rail-security sensitive substances that are carried by rail? This information could include but not be limited to contents on specific trains, routes, and times traveled.

Answer. While railroads are required to compile and analyze routing information for certain hazardous materials, including TIH materials, FRA and PHMSA may inspect this data but we do not compile or retain it.

Subpart 1 of 49 CFR Part 172 includes requirements regarding the development of safety and security plans for certain hazardous materials (see section 172.800(b)) such as TIH, explosives, or radioactive materials, and additional analysis and routing requirements for certain hazardous materials (see section 172.820(a)).

With regard to collection of this information we do not require submittal of safety and security plans or information used in a routing analysis. The regulations do require those subject to the requirements maintain a copy of the information that is accessible at, or through, its principal place of business. These materials must be made available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or the Department of Homeland Security.

urity. (See sections 172.800(d) and 172.820(i) and (j)). FRA reviews the railroad security plans and routing analyses, but FRA does not collect this specific data.

Positive Train Control (PTC) implementation plans submitted to FRA are risk-based, so the routes for PTC installation are prioritized based on risk. FRA knows if a particular route is being PTC-equipped because TIH is transported on the route, but FRA does not collect or require other data related to hazardous materials for purposes of the PTC implementation plan. See 49 U.S.C. 20157 and 49 C.F.R. 236.1011(a)(5)(i).

Question 6. Assuming the DOT collects some information regarding TIH or other rail-security sensitive substances that are carried by rail, what does the Department do with that information? For example, does the DOT share that information with local officials and/or first responders, and if so, when (*i.e.*, in advance of a shipment, or after a spill or other type of accident occurs)?

Answer. Again, FRA and PHMSA do require detailed reports regarding certain rail accidents/incidents, and certain hazardous materials releases. For FRA, the accident reports may contain information about whether a TIH or other hazardous material was involved, but that is not specifically required. The hazmat incident data collected by PHMSA would indicate what hazardous material was involved in a release. While railroads are required to compile and analyze routing information for certain hazardous materials, including TIH materials, FRA and PHMSA may inspect this data but we do not compile or retain it.

DOT notes that the Nation's railroads and hazardous materials shippers partner on voluntary efforts to educate and aid emergency responders. An example of this is the TRANSCAER program, a national outreach effort that focuses on assisting communities to prepare for and respond to a possible hazardous materials transportation incident. TRANSCAER members consist of volunteer representatives from the chemical manufacturing, transportation, distributor, and emergency response industries, as well as the Federal Government.

Most railroads have claimed that information related to the quantity of TIH transported over a certain route is proprietary/confidential as it could disclose market share and put a railroad at a competitive disadvantage.

Question 7. Section 10301 of SAFETEA-LU required standards to address both complete and partial ejections from vehicles. However, the rule did not address occupant ejections through sunroof and rear window vehicle openings, which together have accounted for more than 12 percent of injuries and 7 percent of deaths from ejection. In the final rule, NHTSA stated: "We plan to examine field data to better understand the current and future extent of roof ejections, and will seek to learn about the future implementation of sun/moon roofs in vehicles and ideas about effective ejection countermeasures through those portals. The results of this work may find that future rulemaking on roof ejections could be warranted." What has NHTSA done to examine the field data and determine whether a new rulemaking is warranted? Please provide me with a description of all efforts to date, along with a timeline that describes future plans.

Answer. After completion of the final rule, NHTSA formed a working group made up of members of Rulemaking, Enforcement, Research and the National Center for Statistics and Analysis to complete this task. The group started by analyzing real world crashes involving ejections through roof portals included in our Fatality Analysis Reporting System (FARS) and National Automotive Sampling System Crashworthiness Data System (NASS-CDS) and met with manufacturers to better understand the issue. The group then used this information to develop a research test plan for further investigation. Testing is expected to be completed before the end of calendar year 2014. The results of this testing will be used to make a management decision in 2015 regarding how to proceed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CORY BOOKER TO
HON. ANTHONY R. FOXX

Question 1. Mr. Secretary—as you may know, my predecessor in the Senate, Frank Lautenberg, was a fierce advocate in the prevention of drunk driving. I too, share his passion to keep our roads safe and wanted to ask you a question in regards to drunk driving prevention through the use of ignition interlocks.

These devices, which prevent a driver from starting his or her vehicle if their blood alcohol level is elevated, has been a proven lifesaver and the National Transportation Safety Board has advocated for the expansion of their use.

Almost all states have some type of mandatory or discretionary ignition interlock program, and 36 of them have laws mandating their use after a first DUI conviction. Yet, of these 36, only two were awarded Section 405(d) Federal grants specifically

designed to encourage states to adopt and enforce mandatory ignition interlock laws. Mr. Secretary, are there ways that we can improve the utilization of this grant program?

Answer. MAP-21 specifies that to qualify for a grant under section 405(d) a state must adopt and enforce a mandatory law that requires all offenders convicted of DUI to be limited to driving only motor vehicles equipped with ignition interlocks. The plain language of the statute sets a very straightforward requirement that an interlock must be used. Unfortunately, many States, including some with laws that are described as mandatory, include exemptions or permissions in their laws that allow offenders to avoid interlock use under some circumstances. Under the plain language of the statute, these states do not qualify for a grant.

Currently, the Department provides technical assistance to states to help strengthen ignition interlock laws and meet the grant requirements. For example, in the first year of the grant program 14 states applied for a grant and two states met the qualification criteria. In the second grant year, 12 states applied for a grant and four states qualified. The increase in awards from the first to the second year resulted from two states amending their laws to remove exemptions and establish mandatory programs.

The Department's Grow America Act also proposes changes to Section 405(d) that would expand eligibility for the ignition interlock grant program by allowing states with employer or rural exemptions in their interlock laws to be eligible if DUI offenders are still covered by a 24-7 monitoring program. A 24-7 program requires DUI offenders to either check in with authorities periodically during each day and complete breath alcohol tests or use a continuous electronic monitoring device.

We believe that the combination of technical assistance to states and refinements to the statute will enable more states to qualify for Section 405(d) grant funds.

Question 2. Mr. Secretary, I am concerned that states that are doing the right thing when it comes to drunk driver prevention are not being recognized by the grant program and moreover, that the remaining states who are considering stronger ignition interlock laws are discouraged to do so through the failure of this program. I would like to hear your thoughts on the best ways that I can work with you and Acting NHTSA Administrator Friedman to improve the responsiveness of the 405(d) grant program as well other provisions in MAP-21 to make sure NHTSA is doing everything it can to ensure that the drivers on our roads are sober drivers.

Answer. We believe that incentive grant programs such as the Ignition Interlock Incentive Program should seek a balance between rewarding states that have enacted effective laws and providing funds for states to build effective programs. Refinements to the existing Section 405(d) grant program have been proposed in the Department's Grow America Act that would seek this balance by allowing additional opportunities for states to qualify for incentive funds. These refinements would allow states with employment and rural exemptions to be eligible for a grant if offenders are still covered by a 24-7 monitoring program.

The current research shows that ignition interlocks are effective when they are installed on vehicles. Consequently, the introduction of exemptions in this grant program that would allow offenders to drive without interlocks or any kind of monitoring should be carefully considered. As a general matter, we feel these types of exemptions in any form undermine safety.

Question 3. Another important safety issue that I would like to discuss is in regards to the General Motors recall. It is deeply concerning that the National Highway Traffic Safety Administration (NHTSA) failed to take action to identify the ignition switch problem and require a recall over a ten year period, despite opening two separate investigations of the failure of the vehicle's airbags to deploy in crashes. What could be included in transportation reauthorization proposal that could help the agency ensure that safety defects are identified and prevented in the early stages?

Answer. The GROW AMERICA Act will strengthen NHTSA's ability to hold automobile manufacturers accountable for defects that can cost lives. Specifically, the Act:

- Establishes harsher penalties for manufacturers that refuse to address defective and dangerous vehicles and equipment that endanger the public;
- Provides the authority to require manufacturers to cease retail sale and/or require repair of vehicles or equipment that pose an imminent hazard to the safety of the motoring public; and
- Provides the authority to require rental car companies and used car dealers to participate in recalls of defective and unsafe vehicles.

To increase the effectiveness of NHTSA's safety defects investigation, we also believe that the following steps are necessary: enhance the Office of Defect's (ODI) ability to use the latest technology to help identify possible safety defects; increase the public's awareness of reporting safety problems with their vehicles or vehicle equipment to NHTSA; and provide ODI with the personnel resources to address potential safety risks.

Question 4. What changes in agency process and procedures could prevent another safety defect from going undetected?

Answer. The Department continually seeks new ways to improve our processes. We are currently conducting an internal due diligence review of our processes. As part of that effort, we are reviewing the events leading up to this recall to see if there are areas that can be improved.

For example, we are looking to improve our understanding of the way that various manufacturers design air bags to function when the vehicle loses power, considering whether we need to improve the use of Special Crash Investigation (SCI) in our defects screening process, reviewing ways to better incorporate information about remote defect possibilities into the investigative process, and evaluating our process for engaging manufacturers around issue evaluations. As a result of NHTSA's communication with automotive manufacturers and suppliers regarding air bag design and performance related to the position of the vehicle ignition switch, NHTSA has opened two formal investigations related to potential safety defects related to the air bag systems in certain Chrysler vehicles (MY 2006–2007 Jeep Commander and MY 2005–2006 Jeep Grand Cherokee vehicles and 2008–2010 Grand Caravan, Town and Country and Dodge Journey vehicles).

Additionally, we are working closely with the Department's Office of the Inspector General audit assessing issues pertaining to NHTSA's actions prior to the recent GM recalls.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
HON. ANTHONY R. FOXX

To address concerns with implementation of Positive Train Control (PTC).

Question 1. As I mentioned in my opening statement, I am pleased to see that your draft legislation addresses the issue of PTC. The Committee has heard testimony on several recent occasions about the obstacles passenger and freight railroads are encountering in their efforts to meet the 2015 deadline, most notably the issues with the FCC approval process for communications towers which hasn't granted a single permit since MAY 2013. Can you please outline the administration's proposals for PTC and for addressing difficulties in implementation?

Answer. The GROW AMERICA Act grants the Secretary of Transportation new authority in four areas: (1) to grant merit-based extensions of the current statutory implementation deadline for PTC systems; (2) to establish a schedule with milestones for PTC system implementation; (3) to permit provisional operation of a PTC system or component prior to its full certification; and (4) to allow alternative methods of protection in lieu of a PTC system where the alternative methods will provide appropriate risk mitigation against PTC-preventable accidents. The GROW AMERICA Act also reinforces the need for coordination between DOT and the FCC to assess spectrum needs and determine a solution to lack of spectrum availability.

Question 1a. Why have you not included a blanket extension of the 2015 PTC deadline since there isn't a single freight railroad and most passenger lines are nowhere near being compliant due to events outside their control?

Answer. Based on the technical challenges that Southern California Regional Rail Authority (Metrolink), Union Pacific Railroad Company (UP), and BNSF Railway Company (BNSF) have experienced, and the other railroads' state of progress, the Federal Railroad Administration (FRA) believes it unlikely that any Class I freight railroad will be able to fully complete PTC system development and approval by the December 31, 2015 deadline. Many will, however, be able to accomplish partial to substantial deployment. FRA believes that BNSF will most likely be the furthest along in the deployment process, with the other railroads following behind them.

The unfortunate reality is that there are technical, financial, and agency review and coordination issues affecting individual railroads' abilities to complete PTC implementation by the December 31, 2015, deadline. The extent to which these issues affect individual railroads is not uniform. I cannot emphasize this enough. I do not believe that a blanket extension is necessarily the most appropriate (or effective) way to address the unique circumstances each railroad is facing. I strongly recommend that extensions be considered on a merit basis and only as necessary and

that they take into consideration the specific issues affecting the particular railroad as well as the ability of the railroad to address the issues, the availability and effectiveness of alternative solutions, and the safety risks, as provided in the GROW AMERICA Act.

Question 1b. In addition, I understand there are very valid concerns regarding interoperability under a scenario where there's different compliance dates for different railroads. What analysis has DOT done about how ad hoc compliance could impact overall operability of various PTC solutions for both passenger and freight railroads?

Answer. Regardless of whether or not DOT is granted the authority requested in the GROW AMERICA Act, the Department anticipates railroads will be in varied states of compliance with the implementation mandate, as previously indicated. This may be either as a consequence of the difficulties individual railroads face in resolving the specific technical and other issues associated with their individual PTC system development and deployment efforts, or as a consequence of system failures once a PTC system has been fully deployed and is operational.

Where a railroad fails to have an interoperable PTC system in place, for whatever the reason, the implementing regulations are designed to maintain a level of safety generally in accord with that which could be expected with an operable PTC system, by requiring supplementary procedures to heighten crew awareness and provide operational controls limiting the frequency of unsafe events and reducing the potential severity of any unsafe event. The implementing regulations further allow for unique customization of these supplementary procedures based on specific risk and risk mitigations.

To stress the importance of preserving 24/7 Sobriety programs as DOT looks to restructure Section 405 incentive grants.

Question 2. Drunk driving is a serious concern, and one that is a priority for me as we move forward with reauthorizing NHTSA. South Dakota has taken recent, proactive steps to address the issue of drunk driving. In 2011, South Dakota passed legislation to create our state's 24/7 Sobriety Program. In MAP-21, which I supported, I fought to protect this program by ensuring it wasn't precluded as an eligible safety program. As you propose to restructure Section 405 incentive grants, what is the Administration's outlook on programs like the 24/7 Sobriety Program, and what steps have you taken to ensure that states have the flexibility to rely on them?

Answer. NHTSA is aware of evaluations of intensive supervision programs, such as the 24/7 Sobriety Program, which indicates that such programs can be effective in reducing DWI recidivism. In the GROW AMERICA Act, the Administration proposes to increase state flexibility with regard to eligibility for an alcohol-ignition interlock law grant by allowing the substitution of 24/7 intensive supervision programs for ignition interlock use under certain circumstances. Under the proposal, a state would be eligible for an ignition interlock grant even if its all-offender interlock law contained an exemption for employer-owned vehicles, provided that the state required such offenders to participate in a 24/7 intensive supervision program. Similarly, a state would also be eligible for an ignition interlock grant even if its all-offender interlock law contained an exemption for rural residents, provided that such offenders live more than one hundred miles from an interlock service provider and they participate in a 24/7 intensive supervision program.

To address South Dakota concerns that more flexible 402 funds will be less available.

Question 3. NHTSA provides State and Community Highway Safety grants under Section 402 in addition to the National Priority Safety Program grants under Section 405, which are more restrictive. The Administration's proposal contemplates funding for Section 405 at higher levels than Section 402. Yet, Section 402 allows states more flexibility to provide for data-driven projects in support of a number of highway safety issues, and some states would prefer to see the funding levels reversed, with 402 receiving as much funding as possible. Can you explain the Administration's rationale for the proposed funding levels as set forward in your proposal?

Answer. In MAP-21, Congress continued the approach from previous highway safety authorizations by extending the Section 402 State and Community Grant Program and providing grants to address specific highway safety problems with the Section 405 National Priority Safety Program Grant Program. In the GROW AMERICA Act, the Administration proposes increases in both Section 402 and Section 405 funding. The Administration proposes approximately 14 percent growth of the Section 402 program and 16 percent growth in the Section 405 program over the life of the bill.

Section 405 funding provides grants to states that meet specific grant criteria to combat highway safety issues that are significant concerns in virtually every State,

such as occupant protection, impaired driving, novice driver safety, distracted driving, motorcycle safety, as well as State traffic safety information systems that form the basis for State highway safety problem identification and resource allocation. Section 405 provides grants to states to address all these safety problems while also providing incentives to states to refine and improve these programs, by raising the bar for qualification over the life of the authorization period. In addition to continuing and revising the existing MAP21 grant programs, the GROW AMERICA Act provides funding for states to address additional safety concerns: the growing number of pedestrian and bicycle crashes, and novice driver safety through the adoption of national driver education standards and programs developed by the driver education community.

Section 402 grants provide funding with flexibility for states to address more State-specific safety problems, identified using data generated from the State traffic safety information systems supported at least in part by Section 405 grants. Much of the Section 402 funding is used by states to address the widespread problems of impaired driving, occupant protection and distracted driving. The existence of Section 405 grants in these areas allows states the option to devote a smaller percentage of their Section 402 funds to these issues and free up those Section 402 funds for use on other State-specific safety problems.

The proposed funding increases in the GROW AMERICA Act are designed to advance the synergy between the National Priority Program grants and the State and Community Highway Safety grants by providing comparable increases in funding to both programs.

To express concern about reports of invasive roadside survey procedures employed by NHTSA contractors.

Question 4. I am concerned about reports regarding the National Roadside Survey of Alcohol and Drugged Driving that revealed motorists complaints of being forced off the road and asked to provide breath, blood and saliva samples. While combating impaired driving is a priority, and while survey data provide important insights to policymakers regarding the scope of this problem, it is important that the methods employed by NHTSA and its contractors respect the civil liberties of our Nation's motorists.

Survey participation should be voluntary and not feel coerced as some have claimed.

Can you explain how the survey was conducted and what procedures, if any, NHTSA employs to ensure that its testing activities—both those conducted by the agency itself and those conducted through third-party contractors—are constitutional and as unobtrusive as possible?

Answer. The National Roadside Survey of Alcohol and Drug Use by Drivers is one of the most reliable sources of data on the presence of alcohol and legal and illegal drugs among drivers on the road. Information gathered through the Roadside Survey is a critical part of our efforts to reduce impaired driving. For example, information from previous surveys contributed to the passage of the 21 Drinking Age law. Also, data from previous surveys helped law enforcement target times for impaired driving enforcement.

Procedures for conducting the Roadside Survey were reviewed and approved by an Institutional Review Board (IRB) for the Protection of Human Subjects, as required by Federal statute. This IRB approval process is designed to ensure that subjects of federally-funded research are treated with dignity, respect, and courtesy, that their participation is voluntary, that there is no coercion, and that volunteers give informed consent to participate.

The following protocols were in place to ensure that the survey was conducted in accordance with law and as unobtrusively as possible:

- The research team placed large signs, including mobile electronic signboards, in the roadway in advance of the survey site to alert drivers to the "Paid Voluntary Survey" ahead.
- Drivers passing by survey locations were randomly selected and asked if they would like to volunteer to participate in the survey.
- Law enforcement officers were present at each survey site for the safety of the motorists and researchers. However, officers remained outside of the data collection area and were not involved in collecting data from the drivers.
- Researchers began by informing drivers that they have done nothing wrong and that they are free to leave at any time. Researchers also gave each driver an information sheet describing the study, stating clearly that the survey is voluntary, and explaining that no personally identifying information will be collected.

- If researchers encountered a driver who appeared to be intoxicated, for the protection of the driver and other motorists researchers offered a series of options (e.g., substituting a sober passenger as a driver in the vehicle; having a researcher drive the vehicle home or to a hotel; hiring a cab). (No driver has ever been arrested at a survey site under this program.)

NHTSA is committed to its mission of reducing traffic deaths and works closely with State partners to develop and implement effective traffic safety programs. The agency also fully recognizes the sensitivity of research activities of this nature and takes great care to ensure that anonymity is preserved and individual rights are not compromised.

Question 5. To request an update on when the Administration expects to formally send up senior nominations including Deputy Secretary, FHWA and NHTSA.

I sent a letter to the President in March 2014 urging him to act swiftly to fill the vacant Administrator position at NHTSA. In that letter, I explained my view that though the Acting Administrator and career staff carry on the work of the agency during periods where there is not a confirmed Administrator, as is the current situation, a sustained absence of leadership can send a mixed message, particularly when it comes to the important safety mission entrusted to NHTSA. The recent recalls of General Motors' vehicles have once again put a spotlight on the Office of Defect Investigation's process for identifying and addressing safety defects. It is important to ensure that there is a Senate confirmed Administrator in place to provide necessary leadership in this and other areas. Can you provide an update to this Committee on what progress has been made with respect to identifying and nominating a candidate to fill this position?

Answer. I share your interest in the importance of having a confirmed Administrator at NHTSA and understand the White House Office of Presidential Personnel is working on finding the appropriate candidate for this vacancy. In the interim, I have full confidence that NHTSA's safety mission continues to be the top priority for the agency's current leadership and staff. My Department looks forward to providing the Committee with more information on this nomination in the near future.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. KELLY AYOTTE TO
HON. ANTHONY R. FOXX

Question. Over the last several years we've seen fatalities of pedestrians and bicyclists increase, even as overall traffic fatalities are falling. These modes account for over 5,000 deaths and 115,000 serious injuries a year.

As you know, I have written to your department in the past requesting a separate performance measure for non-motorized transportation users. In fact, I have introduced legislation that would ensure states measure fatalities of both motorized and non-motorized users, so they may identify safety hazards on their roads.

In March, the Federal Highway Administration (FHWA) released a draft rule of the safety performance measure. Why did this measure not include a separate non-motorized performance measure that would improve data collection and encourage states to focus on reducing these fatalities?

Answer. Pedestrian and bicycle safety is one of my top priorities. All modes in DOT strongly support this priority and will continue to work collaboratively to do so. More information about DOT's bicycle and pedestrian work in this area is available at: <http://www.dot.gov/bicycles-pedestrians>.

In the Notice of Proposed Rulemaking (NPRM) for Safety Performance Measures (available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-03-11/pdf/2014-05152.pdf>), as required by MAP-21, we are proposing the establishment of one measure for each of the four areas mandated by MAP-21: number of fatalities, fatality rate, number of serious injuries, and serious injury rate. Our proposed measure is consistent with the focus of the Highway Safety Improvement Program, which is to reduce all fatalities and serious injuries—including those involving pedestrians and bicyclists.

States are already using and reporting a pedestrian fatality metric through NHTSA's Highway Safety Program. Just this spring, NHTSA reached a further agreement with the Governors Highway Safety Association (GHSA) to add the requirement for states to develop a bicycle safety performance target. These will begin with FY 2015 highway safety grants. You can be assured that both NHTSA and FHWA are working cooperatively on safety performance measures to spur states to achieve the national goal of reducing fatalities and serious injuries for all users.

The Department supports a data-driven approach to addressing safety issues. As states update their Strategic Highway Safety Plans (SHSP)—the statewide-coordi-

nated safety plan that provides a comprehensive framework for reducing all fatalities and serious injuries on all public roads—they bring pedestrian and bicyclist interests to the table and look at crash trends. An SHSP identifies a State's key safety needs and guides investment decisions toward strategies and countermeasures with the most potential to save lives and prevent injuries. The majority of states already include pedestrian and bicyclist safety in their SHSPs either as a priority emphasis area or a strategy.

As FHWA moves through the rulemaking process, FHWA will continue to consider all comments received. The Safety Performance Measures NPRM specifically asks for comment on how the Department could address non-motorized safety performance and how State and MPOs consider such data in their safety programs and in selecting investments.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEB FISCHER TO
HON. ANTHONY R. FOXX

Question 1. The rail industry has not been able to install antennas that will be needed to make Positive Train Control work for over a year while the FCC tries to develop a workable process to handle the 22,000 applications they expect. What are you doing to help move this process forward?

Answer. FRA has worked closely with the FCC and other stakeholders throughout the development of the Program Comment that will apply to most of the antennas within the railroad right-of-way necessary for PTC implementation and was adopted by the Advisory Council on Historic Preservation in May 2014. FRA's primary role is as a technical resource for the FCC to enable it to better understand the potential ramifications of various policy and technical options that it is considering to facilitate the PTC tower application-review process. The FCC is responsible for compliance with the National Historic Preservation Act and the National Environmental Policy Act as they relate to its approval of communication system towers and stations. FRA has no statutory or regulatory authority over spectrum allocation and availability or communication systems tower deployment. FRA has provided, and will continue to provide, the FCC with all possible technical assistance as the FCC implements the Program Comment and approves the antennas necessary for PTC system implementation.

Question 2. The new truck driver hours of service rules your department put in place in July 2013 are having a substantial impact on productivity. To justify the change your department speculated that hours of service would make drivers healthier and live longer. Also, your department recently completed a congressionally mandated study on the rules' restart provision that acknowledged that your rule changes have put more trucks on the road during daytime hours.

What plans does your Department have to measure and try to confirm whether these speculative health benefits will actually be realized? Also, what plans does your Department have to evaluate the daytime driving safety impacts of putting so many trucks on the road at the same time?

Answer. The Hours-of-Service rule has been in place almost a full year; a year in which the industry has seen higher profitability than any year since 2009. Only those drivers who were working more than 70 hours per week are affected by having their work limited to an average of 70 hours per week, which is still nearly double the national standard of a 40-hour work week. The benefits of the rule are not speculative. They are supported by the best available science on the relationship between increased sleep (for sleep-deprived groups, like truck drivers) and increased life expectancy. FMCSA is considering a range of research projects to evaluate the effect of the 2011 final rule, including the two-night requirement that some argue puts an excessive number of trucks on the road early in the morning. The Agency will announce its research plans in due course and seek industry input and cooperation in refining them and carrying out the studies.

This rule also does not prevent carriers and drivers from setting their own schedules, nor does it restrict drivers from being on the roads during any time of the day. Only drivers who run out of time during the work week and exceed 60 hours of work in 7 days or 70 hours in 8 days, and need to begin a new work week as soon as possible would have to use the 34-hour restart, including two nighttime periods from 1–5 a.m. Even then, there is no requirement that such a driver hit the road at a specific hour. Less than 15 percent of long haul truck-drivers are affected by the 34-hour restart.

In our regulatory analysis, the Agency estimated that the changes to the hours of service rule would yield not only safety benefits in lives saved, quantified at 19 lives saved per year, as well as benefits to driver health, including \$280 million in

savings from fewer crashes and \$470 million in savings from improved driver health.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO
HON. ANTHONY R. FOXX

Questions on Pipeline and Hazardous Materials Safety Administration

Question 1. There are considerable Bakken crude testing and survey efforts under way by oil producers and shippers. 17 companies submitted over 1,100 test results to their trade association-representatives of which I know plan to walk PHMSA through the results when they are ready.

The North Dakota Petroleum Council also plans to collect 150 total samples from both well sites and rail facilities. These efforts will provide a substantial amount of data to PHMSA on the characteristics and behavior of Bakken crude.

How will this data be utilized by PHMSA, and do you expect it to settle questions surrounding Bakken crude and how it compares to other crude types?

Answer. Safety is my number one priority as Secretary of Transportation. We appreciate the efforts of the industry to collect and analyze crude oil data following our request to share this information. As we've said, more needs to be understood about this crude oil, and our safety experts are reviewing the data as we also continue to collect and analyze our own data. This testing data is critical to our comprehensive approach.

As part of its on-going efforts, PHMSA has supported the American Petroleum Institute Standards Committee initiative to develop industry standards for proper sampling techniques, testing criteria, and testing frequency for crude oil. PHMSA has actively participated in the discussions during working groups sessions held to date and plans to continue up through expected completion in July. PHMSA uses the data collected on crude oil characteristics in conjunction with physical testing of tank car integrity and predictive modeling tools to gather data on tank car performance in accident scenarios to develop its proposals.

The data submitted to date and any submitted in the future will be analyzed and compared to PHMSA's sampling and testing results. PHMSA is also actively involved in an American Petroleum Institute working group tasked with developing industry best practices, including those regarding testing and sampling methods for crude oil.

Question 2. Will it inform the rulemaking process your department already has underway?

Answer. Yes. Based on PHMSA's own testing and sampling efforts, combined with the voluntarily submitted testing data by industry, PHMSA better understands the unique properties of crude oil. This understanding has led to the development of a comprehensive rulemaking. PHMSA has used the data collected on crude oil characteristics in conjunction with physical testing of tank car integrity and predictive modeling tools to gather data on tank car performance in accident scenario to develop its proposals. PHMSA is confident the proposals in our rulemaking will account for the unique characteristics of crude oil and improve safety and looks forward to public comment on these proposals and the data that supported their development.

Question 3. Mr. Secretary, last week you announced you sent a "comprehensive package" of rules to OMB intended to address rail safety. I understand you are unable to comment on the specific details, but I assume there will be some treatment of rail car design and how to address cars currently in service. I have been informed that a part of the technical analysis your department is considering for rail car design standards is a study by the University of Illinois. But I also understand that study is currently undergoing peer review. How will the results of that peer review be incorporated into the proposed regulatory actions the Department is considering?

Answer. The rulemaking that is currently pending focuses on a variety of topics from tank car design to possibly classification issues.